[Exempt From Filing Fee Government Code § 6103]

DANIEL J. O'HANLON, State Bar No. 122380
REBECCA R. AKROYD, State Bar No. 267305
ELIZABETH L. LEEPER, State Bar No. 280451
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation
400 Capitol Mall, 27th Floor
Sacramento, California 95814
Telephone: (916) 321-4500
Facsimile: (916) 321-4555

Attorneys for Petitioners/Plaintiffs
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY and WESTLANDS WATER DISTRICT

ANDREA A. MATARAZZO, State Bar No. 179198
JEFFREY K. DORSO, State Bar No. 219379
PIONEER LAW GROUP, LLP
1122 S Street
Sacramento, CA 95811
Telephone: (916) 287-9500
Facsimile: (916) 287-9515

Attorneys for Petitioner/Plaintiff
WESTLANDS WATER DISTRICT

[Additional Counsel on Next Two Pages]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

Coordination Proceeding Special Title (Rule 3.550) DELTA STEWARDSHIP COUNCIL CASES	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4758 **STATE AND FEDERAL CONTRACTOR PETITIONERS' JOINT OPENING BRIEF** The Hon. Michael P. Kenny, Dept. 31 Action Filed: May 24, 2013

ADDITIONAL COUNSEL

HAROLD CRAIG MANSON, State Bar No. 102298
General Counsel
PHILIP A. WILLIAMS, State Bar No. 296683
Deputy General Counsel
WESTLANDS WATER DISTRICT
c/o Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814
Telephone: (916) 321-4500
Facsimile: (916) 321-4555

Attorneys for Petitioner/Plaintiff
WESTLANDS WATER DISTRICT

JON D. RUBIN, State Bar No. 196944
General Counsel
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
c/o Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814
Telephone: (916) 321-4500
Facsimile: (916) 321-4555

Attorney for Petitioner/Plaintiff
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

GREGORY K. WILKINSON, State Bar No. 054809
CHARITY SCHILLER, State Bar No. 234291
BEST BEST & KRIEGER LLP
3390 University Avenue, 5th Floor
P.O. Box 1028
Riverside, CA 92502
Telephone: (951) 686-1450
Facsimile: (951) 686-3083

Attorneys for Petitioners/Plaintiffs
STATE WATER CONTRACTORS; ANTELOPE VALLEY-EAST KERN WATER AGENCY; ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7; and SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

STEFANIE D. MORRIS, State Bar No. 239787
General Counsel
STATE WATER CONTRACTORS
1121 L Street, Suite 1050
Sacramento, CA 95814
Telephone: (916) 447-7357
Facsimile: (916) 447-2734

Attorney for Petitioner/Plaintiff
STATE WATER CONTRACTORS

STANLY YAMAMOTO, State Bar No. 092381
District Counsel
ANTHONY T. FULCHER, State Bar No. 192690
Senior Assistant District Counsel
SANTA CLARA VALLEY WATER DISTRICT
5750 Almaden Expressway
San Jose, CA 95118-3686
Telephone: (408) 265-2600
Facsimile: (408) 445-1435

Attorneys for Petitioner/Plaintiff
SANTA CLARA VALLEY WATER DISTRICT

MARCIA L. SCULLY, State Bar No. 080648
General Counsel
ADAM C. KEAR, State Bar No. 207584
Chief Deputy General Counsel
LINUS S. MASOUREDIS, State Bar No. 077322
Chief Deputy General Counsel
ROBERT C. HORTON, State Bar No. 235187
Sr. Deputy General Counsel
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
700 North Alameda Street
Los Angeles, CA 90012-2944
Mailing address: P.O. Box 54153
Los Angeles, CA 90054-0153
Telephone: (213) 217-6336
Facsimile: (213) 217-6890

Attorneys for Petitioner/Plaintiff
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

WILLIAM J. BRUNICK, State Bar No. 046289
LELAND MCELHANEY, State Bar No. 039257
BRUNICK, MCELHANEY & KENNEDY
1839 Commercenter West
San Bernardino, CA 92408-3303
Telephone: (909) 889-8301
Facsimile: (909) 388-1889

Attorneys for Petitioner/Plaintiff
MOJAVE WATER AGENCY

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. STATEMENT OF FACTS 3

A. The State and Federal Contractors 3

B. The Sacramento-San Joaquin River Delta and Water Supplies 3

C. The Bay Delta Conservation Plan 5

D. The Sacramento-San Joaquin Delta Reform Act of 2009 6

E. The Council's Delta Plan and Delta Plan Regulations 8

F. CEQA Review of the Delta Plan 10

III. DELTA PLAN AND DELTA PLAN REGULATIONS STANDARDS OF REVIEW 11

A. Standards Governing Review of the Delta Plan and Delta Plan Regulations 11

B. Additional APA Standards Governing Review of the Delta Plan Regulations 12

IV. ARGUMENT (DELTA PLAN AND DELTA PLAN REGULATIONS CLAIMS) 12

A. WR P1 and Section 5003 of the Delta Plan Regulations Are Contrary to the Act and Void 12

1. WR P1 Is Contrary to the Act Because It Defeats Rather Than Promotes Water Supply Reliability 14

2. WR P1 Is Unlawful Because the Council Has No Authority to Prohibit Export From or Transfers Through the Delta 15

3. WR P1(c) Is Unlawful Because the Council Has No Authority to Second-Guess Local Water Supply Planning and Management Outside the Delta 18

4. The Council's Reliance on the Policy Statement in Section 85021 as Authority For WR P1 Is Misplaced 22

5. The Record Lacks Substantial Evidence that WR P1 Is Reasonably Necessary 24

B. The Delta Plan's Appeals Process Is Void as Contrary to the Act 25

1. The Act's Plain Language Vests Discretion to Proceed with a Covered Action with the Certifying Agency, Not the Council 25

2. The Act's Legislative History Shows the Legislature Removed Provisions that Would Have Authorized the Council to Prevent Inconsistent Covered Actions 27

3. Legislation Enacted Contemporaneous with the Act Demonstrates the Legislature Knew How to Give an Agency the Final Word on Consistency Determinations and Chose Not to Do So for the Council 29

C. The Delta Plan's Treatment of BDCP Is Void as Contrary to the Act 30

1. The Council Lacks the Authority to Require Certifications of Consistency for BDCP Implementing Actions 30

2. The Council Lacks the Authority to Decide a BDCP Appeal Based on a Preponderance of the Evidence Standard of Review and Extra-Record Evidence 33

D. The Council Lacks the Authority to Treat Temporary Water Transfers as "Covered Actions" 36

1. Temporary Through-Delta Water Transfers Are Exempt as Part of SWP and CVP Routine Operations 36

2. Treating Temporary Water Transfers as "Covered Actions" Would Be Inconsistent with the Existing Statutory Scheme and the Act 37

(a) Treating Temporary Water Transfers as Covered Actions Would Be Inconsistent with the Water Code's Existing Statutory Scheme 38

(b) Treating Temporary Water Transfers as Covered Actions Would Be Inconsistent with the Act's Saving Provision for Water Right Protections 39

(c) Treating Temporary Water Transfers as Covered Actions Would Be Inconsistent with the Act's Goal of Improved Water Supply Reliability 40

E. The Policy and Regulation Mandating Transparency in Water Contracting Exceed the Council's Authority and the Regulation Is Contrary to APA Standards 40

1. The Council Has No Authority to Regulate Contract Negotiations Because They Are Part of Routine CVP and SWP Operations, Not Covered Actions 40

2. Section 5004 of the Delta Plan Regulations Is Duplicative and Unnecessary 41

F. The Council Failed to Substantially Comply with the APA Requirements to Assess the Economic Impact of its Proposed Regulations 41

1. An Agency Must Assess the Economic Impacts of its Proposed Regulations 42

2. The Council Failed to Adequately Assess the Economic Impact Associated with the Regulations' Requirement to Reduce Reliance on Delta Water 42

V. THE DELTA PLAN PEIR'S CEQA DEFICIENCIES 44

A. CEQA Standard of Review 44

B. The PEIR's Project Description Violates CEQA 45

1. The CEQA Project Objectives Conflict with the Act and, Hence, Fail as a Matter of Law 45

2. The PEIR Omits Project Components Fundamental to Informed Analysis – the Regulatory Policies of the Delta Plan 47

C. The PEIR Employs a Misleading and Uninformative Baseline Snapshot to Avoid Realistic Assessment of Project Impacts 48

D. The PEIR Fails to Disclose and Analyze All Potentially Significant Project Impacts 51

1. The Council Artificially and Impermissibly Truncated Its Analysis by Ignoring Foreseeable Project Impacts Outside the Delta Region 52

(a) The Council Improperly Provided a Lesser Level of Analysis to Areas Outside the Delta that Use Delta Water 52

(b) The Council Entirely Fails to Consider Impacts in Many Areas Outside the Delta 54

2. The Council Impermissibly Ignored and Deferred the Analysis of Reasonably Foreseeable Environmental Impacts 56

(a) The PEIR Fails Under CEQA's General Requirements for Program Level Review 56

(b) Recent Precedent Confirms that the PEIR Should Be Set Aside 57

3. Even as to Impacts That Are Identified, the Council Failed to Analyze the Project's Impacts and Instead Provides Only Bare Conclusions 59

(a) Impacts to Human Health (Sensitive Receptors) Are Not Analyzed 60

(b) Impacts to Water Supplies Are Not Analyzed 61

4. The Council's "Analysis" and Conclusions Are Not Supported by Substantial Evidence 62

(a) Because of the PEIR's Legal Failures, the Existence or Non-Existence of Substantial Evidence Is Irrelevant 63

(b) Contradictory Evidence Is Not "Substantial Evidence" 63

(i) The Council's Conclusions Regarding Delta Water Supply Availability Are Directly Contradictory 63

(ii) The Council's Conclusions Regarding Operations-Related Groundwater Basin Overdraft Are Contradictory 66

(c) The Council's Conclusions Regarding Construction-Related Groundwater Basin Overdraft Are Contradictory 68

E. Many of the PEIR's "Mitigation Measures" Are Unenforceable or Otherwise Legally Inadequate 69

1. The PEIR Improperly Defers Formulation of Necessary Mitigation Measures Until After Project Approval 69

2. The PEIR's Mitigation Measures Are Uncertain and Unenforceable 71

F. The PEIR's Cumulative Impacts Analysis Is Improperly Circumscribed 73

1. The PEIR's Cumulative Impacts "Analysis" Violates CEQA Because It Is Overly General and Focuses Improperly on Alleged Project Benefits 73

2. The PEIR's Cumulative Impacts Analysis Violates CEQA Because It Fails to Include Other Relevant Actions 75

3. The Geographic Area for the PEIR's Cumulative Impacts Analysis Is Improperly Circumscribed 76

G. The PEIR's Alternatives Analysis Violates CEQA 76

H. The Council's Responses to Comments Are Dismissive and Legally Inadequate, and Fail to Address the Fundamental Defects in the PEIR 77

VI. CONCLUSION 80

TABLE OF AUTHORITIES

Page(s)

Federal Cases

AquAlliance v. U.S. Bur. of Reclamation (E.D. Cal. 2014)
2014 WL 3401390 37

Consol. Delta Smelt Cases (E.D. Cal. 2010) 717 F.Supp.2d 1021 43

Consol. Salmonid Cases (E.D. Cal. 2010) 713 F.Supp.2d 1116 43

Field v. Mans (1995)
516 U.S. 59 34

Westlands Water Dist. v. United States (E.D. Cal. 1994)
1994 U.S.Dist.LEXIS 6260 75

Westlands Water Dist. v. United States (E.D. Cal. 1994)
1994 U.S.Dist.LEXIS 6276 75

California Cases

Agnew v. State Bd. of Equalization
(1999) 21 Cal.4th 310 40

Agosto v. Bd. of Trustees
(2010) 189 Cal.App.4th 330 35

Am. Canyon Community United for Responsible Growth v. City of Am. Canyon
(2006) 145 Cal.App.4th 1062 51

Am. Coatings Assn. v. S. Coast Air Quality Dist.
(2012) 54 Cal.4th 446 25

Assn. for Retarded Citizens v. Dept. of Dev. Servs.
(1985) 38 Cal.3d 384 ..... 18, 36, 37

Audubon Soc. v. Super. Ct.
(1983) 33 Cal.3d 419 17

Bakersfield Citizens for Local Control v. City of Bakersfield
(2004) 124 Cal.App.4th 1184 ..... *passim*

Banning Ranch Conservancy v. City of Newport Beach
(2012) 211 Cal.App.4th 1209 73

In re Bay-Delta
(2008) 43 Cal.4th 1143 ..... *passim*

Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Commissioners
(2001) 91 Cal.App.4th 1344 79

Briggs v. Eden Council for Hope & Opportunity
(1999) 19 Cal.4th 1106 ..... 17, 32

Brodie v. Workers' Comp. Appeals Bd.
(2007) 40 Cal.4th 1313 16

Cal. Assn. of Med. Suppliers v. Maxwell-Jolly
(2011) 199 Cal.App.4th 286 ..... 25, 42

Cal. Chamber of Commerce v. Brown
(2011) 196 Cal.App.4th 233 11

Cal. Clean Energy Com. v. City of Woodland
(2014) 225 Cal.App.4th 173 ..... 56, 58

Cal. Farm Bur. v. Cal. Wildlife Conserv. Bd.
(2006) 143 Cal.App.4th 173 74

Cal. Hosp. Assn. v. Maxwell-Jolly
(2010) 188 Cal.App.4th 559 35

Calatayud v. State
(1998) 18 Cal.4th 1057 38

Citizens' Com. to Save Our Village v. City of Claremont
(1995) 37 Cal.App.4th 1157 63

Citizens for Ceres v. Super. Ct.
(2013) 217 Cal.App.4th 889 ..... 47, 66

Citizens of Goleta Valley v. Bd. of Supers.
(1990) 52 Cal.3d 553 69

City of Long Beach v. LAUSD
(2009) 176 Cal.App.4th 889 ..... 73, 75, 76

City of Long Beach v. Workers' Comp. Appeals Bd.
(2005) 126 Cal.App.4th 298 28

City of Marina v. Bd. of Trustees
(2006) 39 Cal.4th 341 ..... 51, 74

City of Maywood v. LAUSD
(2012) 208 Cal.App.4th 362 59

Co. of Amador v. El Dorado Co. Water Agency
(1999) 76 Cal.App.4th 931 ..... 48, 49

Co. of Inyo v. City of L.A.
(1977) 71 Cal.App.3d 185 45

Co. of San Diego v. Grossmont-Cuyamaca Community College Dist.
(2006) 141 Cal.App.4th 86 51

Co. Sanitation Dist. No. 2 v. Co. of Kern
(2005) 127 Cal.App.4th 1544 ..... 52, 55

Comms. for a Better Envt. v. City of Richmond
(2010) 184 Cal.App.4th 70 ..... 70, 72

People ex rel. Dept. of Pub. Works v. Bosio
(1975) 47 Cal.App.3d 495 51

Dyna-Med, Inc. v. Fair Employment & Housing Com.
(1987) 43 Cal.3d 1379 29

East Bay Mun. Util. Dist. v. Dept. of Forestry & Fire Protection
(1996) 43 Cal.App.4th 1113 74

Endangered Habitats League v. Co. of Orange
(2005) 131 Cal.App.4th 777 ..... 70, 71

Envtl. Defense Fund, Inc. v. East Bay Mun. Utility Dist.
(1977) 20 Cal.3d 327 17

Fed'n of Hillside & Canyon Assns. v. City of L.A.
(2000) 83 Cal.App.4th 1252 71

Friends of Davis v. City of Davis
(2000) 83 Cal.App.4th 1004 ..... 79, 80

Friends of the Eel River v. Sonoma Co. Water Agency
(2003) 108 Cal.App.4th 859 64

Gray v. Co. of Madera
(2008) 167 Cal.App.4th 1099 70

J. R. Norton Co. v. Agric. Labor Relations Bd.
(1979) 26 Cal.3d 1 ..... 11, 14, 32, 36

Kings Co. Farm Bur. v. City of Hanford
(1990) 221 Cal.App.3d 693 ..... 72, 74, 76

Korea Supply Co. v. Lockheed Martin Corp.
(2003) 29 Cal.4th 1134 25

Laurel Heights Improvement Assn. v. Regents of the U.C.
(1988) 47 Cal.3d 376 59

LAUSD v. City of L.A.
(1997) 58 Cal.App.4th 1019 76

LAUSD v. Garcia
(2013) 58 Cal.4th 175 34

Light v. SWRCB
(2014) 226 Cal.App.4th 1463 11

Masonite Corp. v. Super. Ct.
(1994) 25 Cal.App.4th 1045 30

Miklosy v. Regents of U.C.
(2008) 44 Cal.4th 876 27

Muzzy Ranch Co. v. Solano Co. Airport Land Use Com.
(2007) 41 Cal.4th 372 ..... 52, 54, 55

Neighbors for Smart Rail v. Exposition Metro Line Construction Authority
(2013) 57 Cal.4th 439 ..... 48, 50, 63

Oakland Heritage Alliance v. City of Oakland
(2011) 195 Cal.App.4th 884 69

Payne v. Anaheim Memorial Med. Ctr.
(2005) 130 Cal.App.4th 729 26

People v. Bunyard
(1988) 45 Cal.3d 1189 29

People v. Medina
(2009) 171 Cal.App.4th 805 ..... 34, 35

People v. Yartz
(2005) 37 Cal.4th 529 35

Pfeiffer v. City of Sunnyvale City Council
(2011) 200 Cal.App.4th 1552 50

Planning & Cons. League v. DWR
(2000) 83 Cal.App.4th 892 ..... 47, 66, 77

Plastic Pipe & Fittings Assn. v. Cal. Bldg. Standards Com.
(2004) 124 Cal.App.4th 1390 11

POET, LLC v. State Air Res. Bd.
(2013) 218 Cal.App.4th 681 70

Preserve Wild Santee v. City of Santee
(2012) 210 Cal.App.4th 260 ..... 69, 71

Protect the Historic Amador Waterways v. Amador Water Agency
(2004) 116 Cal.App.4th 1099 59

Pulaski v. Cal. Occupational Safety & Health Standards Bd.
(1999) 75 Cal.App.4th 1315 41

Rialto Citizens for Responsible Growth v. City of Rialto
(2012) 208 Cal.App.4th 899 65

Sacramento Old City Assn. v. City Council
(1991) 229 Cal.App.3d 1011 63

San Joaquin Raptor Rescue Ctr. v. Co. of Merced
(2007) 149 Cal.App.4th 645 ..... 45, 47, 70

Schram Constr., Inc. v. Regents of U.C.
(2010) 187 Cal.App.4th 1040 11

Security Nat. Guaranty, Inc. v. Cal. Coastal Com.
(2008) 159 Cal.App.4th 402 11

Shelden v. Marin Co. Employees' Retirement Assn.
(2010) 189 Cal.App.4th 458 35

Sierra Club v. State Bd. of Forestry
(1994) 7 Cal.4th 1215 44

Sims v. Dept. of Corr. & Rehab.
(2013) 216 Cal.App.4th 1059 41

SN Sands Corp. v. City & Co.
(2008) 167 Cal.App.4th 185 ..... 11, 26, 31

Stanislaus Natural Heritage Project v. Co. of Stanislaus
(1996) 48 Cal.App.4th 182 51

Stevens v. City of Glendale
(1981) 125 Cal.App.3d 986 68

Sunset Sky Ranch Pilots Assn. v. Co. of Sacramento
(2009) 47 Cal.4th 902 38

Thornburg v. Super. Ct.
(2006) 138 Cal.App.4th 43 29

Town of Atherton v. California High-Speed Rail Authority
(2014) 228 Cal.App.4th 314 ..... 57, 58, 78

Traverso v. People ex rel. Dept. of Transp.
(1996) 46 Cal.App.4th 1197 ..... 25, 28

Vineyard Area Citizens v. City of Rancho Cordova
(2007) 40 Cal.4th 412 ..... *passim*

W. States Petroleum Assn. v. Bd. of Equalization
(2013) 57 Cal.4th 401 ..... 12, 42, 44

Whitman v. Bd. of Supers.
(1979) 88 Cal.App.3d 397 73

Woods v. Super. Ct.
(1981) 28 Cal.3d 668 11

Yamaha Corp. v. State Bd. of Equalization
(1998) 19 Cal.4th 1 ..... 11, 25

California Statutes

Code Civ. Proc.
§ 1085 ..... 11, 12, 35

Fish & G. Code
§ 2820 ..... 6, 32

Gov. Code
§ 11340 12
§ 11340.5 ..... 33, 34
§ 11342.1 11
§ 11342.2 ..... 11, 12, 36, 41
§ 11342.600 33
§ 11346.3 ..... 41, 42, 43, 44
§ 11346.5 ..... 42, 43
§ 11349 ..... 11, 12
§ 11349.1 41
§ 11350 ..... 12, 24, 41, 42
§ 65352.5 20

Pub. Res. Code
§ 21000 2
§ 21002 ..... 69, 76
§ 21002.1 ..... 69, 76
§ 21060.5 52
§ 21061 76
§ 21081 69
§ 21081.6 71
§ 21083 73
§ 21091 77
§ 21100 69
§ 21150 69
§ 21159.27 58

§ 21168 44
§ 21168.5 44
§ 29702 6
§ 29760 29
§ 29763 29
§ 29763.5 29
§ 29763.8 29
§ 29764 29
§ 29770 29
§ 29771 30

Wat. Code
§ 109 38
§ 174 17
§ 1725 ..... 37, 38
§ 1725-27 38
§ 1725-1745.11 39
§ 1727 39
§ 1729 38
§ 10000-12999 19
§ 10530-10550 20
§ 10608-10608.64 20
§ 10608.12 18
§ 10608.56 20
§ 10610–10657 20
§ 10610-10656 20
§ 10610.2 20
§ 10620 20
§ 10621 20
§ 10631 20
§ 10644 20
§ 10650 20
§ 10800-18053 20
§ 10850 20
§ 79722 21
§ 79740 21
§ 79750 21
§ 79765 21
§ 79780 21
§ 79784 21
§ 85000-85350 1
§ 85001 ..... 6, 12
§ 85002 6
§ 85003 50
§ 85004 ..... 7, 12, 32, 49
§ 85020 ..... *passim*
§ 85021 ..... *passim*
§ 85022 8

§ 85031 ..... 17, 39
§ 85032 17
§ 85054 ..... 6, 13, 16
§ 85057.5 ..... *passim*
§ 85059 7
§ 85086 7
§ 85088 7
§ 85089 7
§ 85204 6
§ 85210 16
§ 85210-85214 22
§ 85211 7
§ 85225 ..... 8, 25
§ 85225-85225.30 ..... 8, 26, 34
§ 85225.10 26
§ 85225.10-85225.25 34
§ 85225.20 16
§ 85225.25 ..... 26, 27, 30, 34
§ 85225.30 34
§ 85300 ..... 7, 13, 14, 17
§ 85300-85350 ..... 7, 22
§ 85301 49
§ 85302 ..... *passim*
§ 85303 ..... 7, 17
§ 85304 ..... 7, 32
§ 85305 7
§ 85307 16
§ 85308 17
§ 85320 ..... *passim*
§ 85321 7

Federal Regulations

50 C.F.R.
§ 17.22 ..... 6, 32
§ 17.32 ..... 6, 32

California Regulations

Cal. Code Regs., tit. 1
§ 10 12

Cal. Code Regs., tit. 14
§ 15000, et. seq. 2
§ 15002 ..... 69, 76
§ 15003 ..... 51, 58
§ 15021 69
§ 15040 79
§ 15041 79
§ 15064 ..... 52, 76
§ 15065 73
§ 15088 77
§ 15091 69
§ 15124 ..... 45, 47
§ 15125 ..... 48, 49, 50
§ 15126.2 59
§ 15126.4 ..... 46, 68, 69, 71
§ 15126.6 ..... 46, 76
§ 15130 ..... 73, 75, 76
§ 15132 77
§ 15355 73
§ 15147 47
§ 15152 57
§ 15168 56
§ 15204 77
§ 15358 ..... 52, 59
§ 15364 51
§ 15370 69
§ 15384 ..... 45, 63
§ 15401 69

Cal. Code Regs., tit. 23
§ 5001 ..... 9, 13, 18, 36
§ 5001-5016 1
§ 5002 ..... 31, 39
§ 5003 ..... *passim*
§ 5004 40
§ 5010 48

TABLE OF DEFINED TERMS AND ABBREVIATIONS

Act: Delta Reform Act

APA: Administrative Procedure Act

BDCP: Bay Delta Conservation Plan

CEQA: California Environmental Quality Act

CM1: Conservation Measure 1

Coequal goals: (1) providing a more reliable water supply for California and (2) protecting, restoring, and enhancing the Delta ecosystem

Cost Analysis: Delta Stewardship Council's Economic and Fiscal Impacts Statement and Cost Analysis

Council: Delta Stewardship Council

CVP: Central Valley Project

CVPIA: Central Valley Project Improvement Act

Delta: Sacramento-San Joaquin River Delta

Delta Plan Regulations: Delta Stewardship Council's Regulations

DFW: Department of Fish and Wildlife

DPC: Delta Protection Commission

DWR: Department of Water Resources

EIR: Environmental Impact Report

ESA: Endangered Species Act

Guidelines: CEQA Guidelines, Cal. Code Regs., tit. 14, § 15000 et seq.

HCP: Habitat Conservation Plan

Metropolitan: Metropolitan Water District of Southern California

NCCP: Natural Community Conservation Plan

NCCPA: Natural Community Conservation Planning Act

PEIR: Program Environmental Impact Report

Plan: Delta Plan

PRC: Public Resources Code

Project: Delta Plan

Projects: Central Valley Project and State Water Project

Reclamation: U.S. Bureau of Reclamation

RMP: Resources Management Plan

San Luis: San Luis & Delta-Mendota Water Authority

State Board: State Water Resources Control Board

Strategic Plan: Delta Vision Strategic Plan

SWC: State Water Contractors

SWP: State Water Project

TAC: Toxic Air Contaminant

Water Contractor Petitioners: San Luis & Delta-Mendota Water Authority; Westlands Water District; State Water Contractors; Antelope Valley-East Kern Water Agency; Alameda County Flood Control and Water Conservation District, Zone 7; San Bernardino Valley Municipal Water District; Santa Clara Valley Water District; Metropolitan Water District of Southern California; Mojave Water Agency

WR P1: Delta Plan Water Resources Policy Number 1

I. INTRODUCTION

The Sacramento-San Joaquin River Delta ("Delta") is the hub of California's water supply system and also the largest estuary on the west coast, providing habitat for sensitive fish species. Over the last few decades, certain species that rely on the Delta have declined. As a result, state and federal agencies have imposed regulatory restrictions on two of the largest water delivery systems in the world, the State Water Project ("SWP") and the Central Valley Project ("CVP"). In addition, climate change and the risk of levee failures imperil future water supplies. Consequently, a vital source of water to most Californians and much of the California economy has become less reliable.

In light of the many stressors on the Delta ecosystem and perennial conflict among agencies and stakeholders over the causes of and potential means to address environmental decline while restoring reliable water supplies, the Legislature adopted the Sacramento-San Joaquin Delta Reform Act of 2009 (Wat. Code, §§ 85000-85350, the "Act"). The Act created the Delta Stewardship Council ("Council") as an independent state agency. The Legislature directed the Council to prepare a Delta Plan designed to further achievement of the "coequal goals" to provide a more reliable water supply for California and to protect, restore, and enhance the Delta ecosystem. In the Act, the Legislature assigned the Council limited administrative authority over certain "covered actions" within the geographic confines of the Delta, and a facilitative role designed to coordinate the Delta's many regulators and interests. The Council has strayed far from that assignment.

In 2013, the Council adopted a Delta Plan with a set of policies and recommendations. Concurrently, the Council adopted a set of corresponding regulations (Cal. Code Regs., tit. 23, §§ 5001-5016, the "Delta Plan Regulations"). Both are flawed; several key components of the Delta Plan and Delta Plan Regulations are inconsistent with the coequal goal of a more reliable water supply and exceed the Council's authority. In Water Resource Policy 1 ("WR P1"), the Council regulates water supplies and actions outside the Delta, and in a manner that jeopardizes the Act's coequal goal of improved water supply reliability. WR P1 prohibits exports from or transfers of water through the Delta if water suppliers outside the Delta fail to adequately reduce reliance first. This is of grave concern to these petitioners, who serve areas of the state that cannot suffer further disruptions of Delta water supplies. Elsewhere in the Delta Plan, the Council creates an appeals process that gives the

Council virtual veto authority over actions it believes are inconsistent with the Delta Plan, ignoring the Legislature's assignment of authority to decide how and whether to implement such actions to state and local agencies. The Council regulates the Bay Delta Conservation Plan ("BDCP") by requiring implementing agencies to certify that specific actions are consistent with the BDCP itself, and creating a BDCP appeals process that uses a "preponderance of the evidence" standard for reviewing the Department of Fish and Wildlife's ("DFW") determination that the BDCP meets the requirements of the Act. Both actions are contrary to the Act and other statutory requirements. This is of serious concern to petitioners because it threatens to impede the BDCP's ability to improve their water supply reliability and thwarts the coequal goals. The Council asserts additional authority over water transfers and state and federal water contracts, but for this too it lacks the authority, and there is no evidence the regulation is necessary in any case. In each of these instances, the Council simply goes too far and contradicts the purposes and choices expressed by the Legislature in the Act.

In contrast, when the Council prepared an economic analysis of the Delta Plan regulations, it failed to go far enough in analyzing the consequences of its action. The Council's economic analysis fails to meet requirements of the Administrative Procedure Act ("APA"), primarily because it neglects and grossly underestimates the profound adverse economic consequences that would result from the reduction in water supplies from the Delta the Council seeks to force through its Delta Plan.

As explained below, in the Delta Plan and Delta Plan Regulations the Council ignored the scope of its authority, and instead proceeded as a super-regulatory entity, a role the Legislature rejected. Because the Delta Plan and Delta Plan Regulations exceed the Council's authority, they are void.

The Council's Program Environmental Impact Report ("PEIR") under the California Environmental Quality Act ("CEQA"[1]) is likewise riddled with errors. It is an extremely long but ultimately uninformative document, lacking any meaningful attempt to analyze various environmental impacts, particularly those relating to the water supply reliability the Delta Plan is supposed to be

[1] Public Resources Code ("PRC") section 21000 et seq. and California Code of Regulations, title 14, section 15000 et seq. (future citations to the latter will appear as "Guidelines, § ____").

improving. Instead of providing the information required for meaningful public participation and informed decisionmaking, the PEIR simply "punts" by providing no meaningful analysis, by assuming most impacts will be significant and unavoidable, and by committing other fatal errors related to project objectives, baseline, mitigation, alternatives, and responses to comments. Thus, not only are certain aspects of the Delta Plan unlawful and void, the CEQA analysis is fatally flawed and merits a remand with instructions to avoid the same pitfalls when it conducts CEQA analysis for a revised, legally adequate Delta Plan.

II. STATEMENT OF FACTS

A. The State and Federal Contractors

The State and Federal Contractor Petitioners ("Water Contractor Petitioners") consist of the State Water Contractors ("SWC"), a non-profit mutual benefit corporation representing 27 public agencies that contract with the Department of Water Resources ("DWR") for water from the SWP; San Luis & Delta-Mendota Water Authority ("San Luis"), a joint powers authority consisting mostly of public agencies that contract with the U.S. Bureau of Reclamation ("Reclamation") for water from the federal CVP; and seven of their member agencies. (Administrative Record p. D3669.[2]) Together, the Water Contractor Petitioners represent 54 California water agencies that rely upon water that is conveyed through the Delta. (D1976-77; D2015.) The Water Contractor Petitioners collectively deliver that water to more than 25 million people in California and almost two million acres of prime farmland. (D1976-77; D3669.) Already, the Water Contractor Petitioners are receiving only a fraction of the water for which they hold SWP or CVP supply contracts due to recurring drought and regulatory restrictions on pumping. (B476; N198; J143401.)

B. The Sacramento-San Joaquin River Delta and Water Supplies

The Delta is an inland river delta and estuary located at the western edge of the Central Valley by the confluence of the Sacramento and San Joaquin Rivers, and lies just east of where the rivers enter Suisun Bay. (J158369.) The watersheds for the Sacramento and San Joaquin Rivers and the

[2] All citations in the format of a capital letter immediately followed by a number are references to the administrative record. Leading zeros in the citations have been omitted for ease of reference.

Delta deliver runoff from 40 percent of the state's land, which provides water for much of California while serving as habitat for more than 500 species of wildlife, including species listed as threatened or endangered. (J158369-70; J158376; J158378-79.) Farming of the fertile peat soil throughout the Delta contributes to the California economy, but it has led to extensive subsidence, leaving many areas below sea level, which has created significant flood risks for residents, infrastructure, and water supplies. (J158377-78; J158411; J11601; J116115-17.) The Delta serves as the hub for California's water supply. (J158370; J158380-87; J158412.) There are over 2,200 points where water is diverted in the Delta, primarily for agriculture. (J158372; J158380.) The CVP and SWP pump water that is conveyed through the Delta to meet urban and agricultural water needs in the southern and eastern San Francisco Bay Area, the Central Coast, the San Joaquin Valley, and/or Southern California. (J158380.) The CVP stores and distributes approximately 20-percent of the state's developed water supplies, serving water to approximately 250 contractors in 29 counties, including counties north and south of the Delta as well as in the Delta. (J158383-85; J158412.) The SWP delivers water to agencies in the Upper Feather River, North Bay (Solano and Napa Counties), South Bay, San Joaquin Valley, Central Coast, and Southern California, providing water to 25 million residents and 750,000 acres of farmland. (J158386.)

The CVP and SWP are operated in a coordinated fashion, and they are subject to a host of state and federal regulatory restrictions to protect water quality and sensitive environmental resources that require careful orchestration of reservoir releases upstream of the Delta and pumping from the south Delta. (J158387-400.) Over time, regulatory requirements intended to protect threatened and endangered species have reduced the reliability of the SWP and CVP and the ability to deliver water when precipitation and storage would otherwise permit deliveries, and going forward, climate change, sea level rise, and risk of levee failures and flooding are expected to further reduce reliability of Delta supplies unless major steps are taken to address them. (J158373; J11589; J11609-19; J11625-40 [SWP 2010 Reliability Report]; see also L10242 [SWP 2011 Reliability Report]; L5123-25.) Meanwhile, a host of factors *unrelated* to the SWP and CVP have contributed to the decline of sensitive species in the Delta, including loss of habitat, introduction of invasive aquatic plants, fish and clams, discharges of municipal wastewater and agricultural return flows. (J158372-80; B470-77.)

C. The Bay Delta Conservation Plan

The BDCP is the planning effort initiated in 2006 by DWR and a group of state and federal water contractors, including most of the Water Contractor Petitioners, as well as a self-selected group of environmental and other stakeholders to develop a Natural Community Conservation Plan ("NCCP") and Habitat Conservation Plan ("HCP") under the California Natural Community Conservation Planning Act ("NCCPA") and the federal Endangered Species Act ("ESA"), respectively. (J143396; J158369; I1729-33; J127282 [2007 BDCP Steering Comm. Points of Agreement for Continuing the Planning Process]; J128769-83 [BDCP EIR/EIS Scoping Report 2008].) The BDCP's fundamental goal is "to make physical and operational improvements to the SWP system in the Delta necessary to restore and protect ecosystem health, water supplies of the SWP and CVP south-of-Delta, and water quality within a stable regulatory framework, consistent with statutory and contractual obligations." (J143397; J143421.) The BDCP's project objectives include obtaining permits to construct and operate new conveyance facilities to move water entering the Delta from the Sacramento Valley watershed (known as Conservation Measure 1 or "CM 1") to establish more natural flow patterns and reduce entrainment of sensitive fish, and to reduce risk of impacts on water supply and quality from levee failures and sea level rise. (J143398.) It also includes the implementation of 21 other conservation measures, the most significant of which involve creation, restoration, enhancement and preservation of over 70,000 acres of habitat to conserve 56 species over a 50-year term. (J143398; I1733-35; L5123-25; B595.)

Significantly, the BDCP is intended to restore the reliability of SWP and CVP water supplies by "[r]estor[ing] and protect[ing] the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water," consistent with applicable law and contractual obligations. (J143398.) In addition, CM 1 must "reliably deliver water at costs that are not so high as to preclude, and in amounts that are sufficient to support, the financing of the investments necessary to fund construction and operation of facilities and/or improvements." (J143398-99.) Once the BDCP is approved by the various state and federal fishery agencies under the NCCPA and ESA, DWR and other permittees will receive certain regulatory assurances that if unforeseen circumstances impact covered species during plan implementation, no more restrictions on

the use of water or land, and no more financial resources can be required beyond the considerable multi-billion-dollar investment detailed in the plan itself without the permittees' consent. (Fish & G. Code, § 2820(f) [NCCPA assurances]; 50 C.F.R. §§ 17.22(b)(5), 17.32(b)(5) [ESA assurances].) In other words, the BDCP must be designed and implemented in a cost-effective way that supports the investment of the public agency water contractors in the construction, operation, and mitigation of CM 1 (new Delta conveyance). While it was originally anticipated that the BDCP would be approved and in effect before the Delta Plan (J128783 [BDCP Steering Committee estimating completion by 2010]), it is currently still in the environmental review process.

D. <u>The Sacramento-San Joaquin Delta Reform Act of 2009</u>

SBX7-1 was part of a larger package of water bills and included the Act, enacted in 2009. (D6731; B479.) In the Act, the Legislature found that the "Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable. Resolving the crisis requires fundamental reorganization of the state's management of Delta watershed resources." (Wat. Code, § 85001(a).) It declared that the Delta "serves Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America." (*Id.*, § 85002.) Accordingly, the Act adopts the "coequal goals" of "providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem." (PRC, § 29702; Wat. Code, §85054.) And it specifies that the coequal goals must be achieved "in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." (Wat. Code, § 85054.)

In light of the environmental challenges facing the Delta and the vital importance of water conveyed through the Delta to the state's economy, the Legislature stated the intent of the Act is:

> to provide for the sustainable management of the Sacramento-San Joaquin Delta ecosystem, to provide for a more reliable water supply for the state, to protect and enhance the quality of water supply from the Delta, and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan.

(Wat. Code, § 85001(c).) Accordingly, the Act created the Council to "establish and oversee a committee of agencies responsible for implementing the Delta Plan. Each agency shall coordinate its actions pursuant to the Delta Plan with the council and the other relevant agencies." (*Id.*, § 85204.) In

adopting the Act the Legislature rejected creating a new agency with sweeping jurisdiction and powers. While initial proposals included creation of a new super-regulatory agency, the legislation ultimately adopted created the Council, but granted it narrow and circumscribed authority. (See Sections IV.A.2. and IV.B.3, below.)

The Act directs the Council to prepare a Delta Plan, with its contents prescribed by sections 85300-85350. (Wat. Code, § 85300(a).) The Delta Plan is intended to be "the comprehensive, long-term management plan for the Delta . . . ." (*Id.*, § 85059; D6731.) Its purpose is to "further" the coequal goals and "assist in guiding state and local agency actions related to the Delta." (*Id.*, §§ 85300(a), 85302(a).) Among other things, the Act requires the Council to include measures in the Plan to promote certain characteristics of a healthy ecosystem (*id.*, § 85302(c)) and a more reliable water supply that meets the needs for reasonable and beneficial uses of water, sustains the economic vitality of the state and improves water quality (*id.*, § 85302(d)). The Plan is also required to include measures that promote "statewide water conservation, water use efficiency, and sustainable use of water," "options for new and improved infrastructure relating to the water conveyance in the Delta, storage systems, and for the operation of both to achieve the coequal goals," and "effective emergency preparedness, appropriate land uses, and strategic levee investments." (*Id.*, §§ 85303, 85304, 85305(a)). However, the Act does not direct the Council to include any measures to reduce reliance on Delta water. That policy is directed to each region that relies on Delta water (*id.*, § 85021), not the Council or the Delta Plan.

The Act directly addresses the unique relationship between the Delta Plan and the BDCP. Section 85004(b) recognizes that providing a more reliable water supply involves "new . . . Delta conveyance facilities," and section 85020(f) includes improving the water conveyance system among the objectives inherent in the coequal goals.[3] In addition, the Delta Plan must include performance measurements to track the health of the Delta estuary and the "reliability of California water supply imported from the Sacramento River or the San Joaquin River watershed." (*Id.*, § 85211.)

[3] For other provisions relating to BDCP, see also Wat. Code, §§ 85086(c), 85088, 85089, 85320, 85321.

Significantly, if DFW determines that the BDCP meets the requirements of section 85320 of the Act and is approved by state and federal wildlife agencies under the NCCPA and ESA, when the BDCP is finally approved, the Council is required to incorporate it into the Delta Plan. (*Id*., § 85320(e).)

Thus, the Act expressly acknowledges the BDCP, and specifically the new Delta conveyance, is expected to be a core component in achieving the coequal goals. In addition, when the Act was adopted, the Legislature anticipated that the BDCP would be completed before the Delta Plan. (Wat. Code, § 85057.5(b)(7)(B).) In recognition of the anticipated timing and significant contribution to achieving the coequal goals, the Act gives the BDCP a fundamentally different treatment from other actions in the Delta that may be covered by the Delta Plan, and assigns the Council an important role as a consulting agency that may hear an appeal of DFW's determination that BDCP meets the specific requirements of the Act. (*Id*., §§ 85320(c) [DWR shall consult with the Council and DFW while developing the BDCP], *id*., subd. (e) [Council to hear an appeal of DFW's determination], *id*., subd. (f) [DWR or any agencies charged with implementing BDCP shall report to the Council on implementation of BDCP at least annually].)

The Act sets forth the primary mechanism that makes the Delta Plan enforceable in sections 85225-85225.30. It requires any state or local agency that proposes to undertake a "covered action" that will occur in whole or in part in the Delta to prepare "a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan" and submit it to the Council. (Wat. Code, §§ 85225, 85022(a).) "Covered actions" include actions that qualify as "projects" for CEQA, and that will occur in whole or in part within the boundaries of the Delta or Suisun Marsh, will be carried out, approved, or funded by a state or local agency, are "covered by one or more provisions of the Delta Plan," and that "[w]ill have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs . . . ." (*Id.*, § 85057.5(a).) Significantly, the definition of "covered action" specifically excludes certain actions, including "[r]outine maintenance and operation of the [SWP] or the [CVP]." (*Id*., § 85057.5(b)(2).)

E. <u>The Council's Delta Plan and Delta Plan Regulations</u>

Over a three-year period, the Council produced eight drafts of the Delta Plan. (N204; see

K396; K877; K1806; K3191; K4236.) The Council circulated the "Final Draft Delta Plan," along with an Initial Statement of Reasons, in November 2012 for review under the APA. (N194; N204.) After completing CEQA review, the Council adopted the final Plan on May 16, 2013. (B1-2; B415-788 [Delta Plan].) As adopted, the Plan consists of "policies" and "recommendations." (B445; D5900; D5978-79.) The "policies" are intended to have a *mandatory*, regulatory effect on covered actions. (B445; D5978.) The Plan also includes "performance measures" to assist in implementing the policies and recommendations, and "issues for future evaluation and coordination," that are to be addressed by the Council and other agencies when additional information becomes available. (B505; D5979.) Among other things, and in part through WR P1, the Delta Plan seeks to require "a significant reduction in the amount of water used or in the percentage of water used from the Delta watershed." (B541.) Although the policy would allow for reduced reliance either by reducing the amount of Delta water in a supplier's overall portfolio of water sources (e.g. by increasing local supplies to meet future increased water needs), the PEIR anticipates that implementation of the Delta Plan, including the reduced reliance policy in WR P1, will lead to an overall reduction in the *amounts* of water exported from the Delta relative to the "No Project" alternative. (D6734.) The Council also adopted appeal procedures for certifications of consistency (B517-18; B1277-81), and for DFW's determination that the BDCP meets the requirements of section 85320 (B517; B1283-84); WR P2, which requires transparency in contracting for water supplies from the SWP and CVP (B450); section 5001(dd)(3) of the California Code of Regulations temporarily exempting short-term water transfers from the definition of "covered actions;" and a requirement that BDCP implementing actions be individually certified as consistent with the BDCP itself (B517). The Council also prepared an economic Cost Analysis to assess the economic consequences of its Regulations. (N821-79.)

To adopt the corresponding Delta Plan Regulations, the Council initiated formal rulemaking under the APA by filing a Notice of Proposed Adoption in November 2012, and, after two public comment periods and multiple public hearings, adopted the final Delta Plan Regulations on May 17, 2013. (B1457-58; see also H1527.) The Delta Plan Regulations correspond directly to the Delta Plan's "policies."

The Water Contractor Petitioners commented extensively on drafts of both the Delta Plan and

the Delta Plan Regulations, noting a number of legal violations. (E.g., K107-10; K746-48; K2138-92; K2277-78; K2824-78; K2913; K3997-4004; K4756-57; K10943-67; K11804-18; K12768-85.)

F. CEQA Review of the Delta Plan

The Council released the Draft PEIR for the Delta Plan on November 4, 2011, which evaluated the August 2011 Fifth Staff Draft Delta Plan, a non-final draft of the Plan. (H444; D5977; D6711.) After reviewing comments on the Plan and the Draft PEIR, the Council revised the Plan, making substantive changes. (D28; D5977.) The 2012 Final Draft Delta Plan ("Delta Plan," "Plan," or "Project") was then analyzed pursuant to CEQA in a Recirculated Draft PEIR issued in November 2012. (H582; D28; D5887.) The Council released and certified the Final PEIR in May 2013.[4] (H1448; C3.) The organization of the PEIR is complicated: "the PEIR" as certified consists of the entire Draft PEIR, the Recirculated Draft PEIR, the Final PEIR, and four Errata documents. (C1-2; D27.) Environmental review of the Plan can only be understood by reviewing all of these documents together because, while the "project" was substantially revised after the issuance of the Draft PEIR, the Recirculated Draft PEIR extensively cross-references and incorporates much of the narrative from the Draft PEIR. (D28; D6001-02.)

In its approval Findings, the Council found that the Delta Plan would result in numerous direct and cumulative significant and unavoidable impacts. (C7-61; C79-88.) The Council also identified significant impacts it found would be reduced to less than significant for covered actions, but not for non-covered actions, including impacts to water resources, Delta flood risks, air quality, mineral resources, hazards and hazardous materials, utilities and service systems. (C61-74.)

The Water Contractor Petitioners commented extensively at every stage of CEQA review, noting a number of substantial defects. (E.g., D331-57; D1976-2015; D3666-96; D4302-18; I548-1666; I1672-78.)

[4] The Final PEIR is not a stand-alone EIR but merely contains the Council's responses to comments on the Draft PEIR and the Recirculated Draft PEIR and describes minor textual changes. (D27.)

III. DELTA PLAN AND DELTA PLAN REGULATIONS STANDARDS OF REVIEW

A. Standards Governing Review of the Delta Plan and Delta Plan Regulations

The Water Contractor Petitioners challenge the adoption of the Delta Plan and Delta Plan Regulations pursuant to Code of Civil Procedure section 1085. "[L]egal issues, such as issues of statutory construction, are reviewed de novo." (*Cal. Chamber of Commerce v. Brown* (2011) 196 Cal.App.4th 233, 248 fn. 11; *Light v. SWRCB* (2014) 226 Cal.App.4th 1463, 1482.) De novo review applies because, as an administrative agency, the Council has only those powers granted to it by statute. (*Security Nat. Guaranty, Inc. v. Cal. Coastal Com.* (2008) 159 Cal.App.4th 402, 419.)

The Council has no discretion to adopt a policy or promulgate a regulation that is inconsistent with its governing statute, the Act. (Gov. Code, §§ 11342.1, 11342.2; *Woods v. Super. Ct.* (1981) 28 Cal.3d 668, 679.) Likewise, if a policy or regulation is inconsistent with other existing laws and constitutional provisions, it exceeds the agency's authority and is void. (Gov. Code, §§ 11342.2, 11349(d).) Courts must "independently determine[] . . . whether the agency has acted within the scope of its statutory authority." (*Plastic Pipe & Fittings Assn. v. Cal. Bldg. Standards Com.* (2004) 124 Cal.App.4th 1390, 1406, citing *Yamaha Corp. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11 fn. 4; *Schram Constr., Inc. v. Regents of U.C.* (2010) 187 Cal.App.4th 1040, 1052.) "[W]hen administrative rules or regulations 'alter or amend the statute or enlarge or impair its scope,' they 'are void and courts not only may, but it is their obligation to strike down such regulations. [Citations.]'" (*J. R. Norton Co. v. Agric. Labor Relations Bd.* (1979) 26 Cal.3d 1, 29.)

Some aspects of the Delta Plan are subject to review for abuse of discretion, i.e., examining whether the agency's "actions have been arbitrary or capricious, entirely lacking in evidentiary support, or whether it failed to follow proper procedures or failed to give notice as required by law. This generally means that a court cannot disturb the agency's decision if substantial evidence in the administrative record supports the decision." (*SN Sands Corp. v. City & Co.* (2008) 167 Cal.App.4th 185, 191 [internal quotations and citations omitted].)

B. Additional APA Standards Governing Review of the Delta Plan Regulations

Additionally, the Delta Plan Regulations are subject to review under the APA.[5] Pursuant to Government Code section 11350, "[a]ny interested person may obtain a judicial declaration as to the validity of any regulation . . . . The regulation . . . may be declared to be invalid for a substantial failure to comply with [provisions of the APA, Gov. Code, § 11340 *et seq*.] . . ." (Gov. Code, § 11350(a).) Regulations purporting to implement or interpret a statute must be reasonably necessary to effectuate the statute's purpose. (*Id*., § 11342.2.) The Legislature has defined "necessity" to mean that "the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute . . .that the regulation implements, interprets, or makes specific . . . ." (*Id*., § 11349(a); see also Cal. Code Regs., tit. 1, § 10(b).) If the agency's determination that its regulation is reasonably necessary lacks the support of substantial evidence in the record, it is invalid. (*Id*., § 11350(b)(1); *W. States Petroleum Assn. v. Bd. of Equalization* (2013) 57 Cal.4th 401, 415.)

IV. ARGUMENT (DELTA PLAN AND DELTA PLAN REGULATIONS CLAIMS)

A. WR P1 and Section 5003 of the Delta Plan Regulations Are Contrary to the Act and Void

Two-thirds of the state's population, and much of its most productive farmland, relies upon on water pumped at the southern Delta. (Wat. Code, § 85004(a).) As explained in Section II.B., above, over the past two decades the reliability of Delta water supplies has diminished, as a result of increased regulation and drought, and less water has been available than is needed to support existing beneficial uses. Recognizing this ongoing shortfall, a key purpose of the Act is to "provide for a more reliable water supply for the state." (*Id*., §§ 85001(c), 85004 [declaring the importance of and

---

[5] The Water Contractor Petitioners challenge the Delta Plan Regulations pursuant to both Government Code section 11350 and Code of Civil Procedure section 1085. While for claims brought under Government Code section 11350, the record is limited to the matters identified in Government Code section 11350(d), claims challenging the regulations pursuant to section 1085 are not subject to the limitation in section 11350(d). The Council has not separately segregated the rulemaking file in the record. In Section N, it identifies only those "APA Rulemaking File documents not already in Sections A to M." Water Contractor Petitioners believe that all documents cited in its challenge to the Delta Plan Regulations are documents that fall within the scope of section 11350(d).

necessity for a more reliable supply].). Under the Act, "providing a more reliable water supply for California" must be a "coequal goal" of the Delta Plan. (*Id*., §§ 85300(a), 85054.) Fulfillment of this goal is of critical importance to the Water Contractor Petitioners because the communities and farms they serve rely upon water pumped at the Delta, and the needs of beneficial uses served by this supply are not being adequately and reliably met. Indeed, as explained above, achieving the coequal goal of a more reliable water supply involves achieving more reliable supplies from the Delta for the SWP and CVP and the millions of Californians and acres of farmland they serve.

Instead of ameliorating this water shortage, the Council has adopted a policy and related regulations that would worsen it by design, by prohibiting water transfers and other actions to divert water from the Delta if recipients do not take certain actions outside the Delta. Specifically, under regulatory policy WR P1 "[w]ater shall not be exported from, transferred through, or used in the Delta" if in the Council's judgment a water supplier receiving such water has "failed to adequately contribute to reduced reliance on the Delta and improved regional self-reliance." (WR P1(a), B568-69.) Section 5003 of the Council's regulations repeats WR P1. (Cal. Code Regs., tit. 23, § 5003.)[6] Adequate contribution is defined as achieving a "reduction in the amount of water used, or in the percentage of water used, from the Delta watershed." (WR P1(c)(1)(C), B569.) In Appendix G to the Plan, the Council provides an example of how it would regulate a proposed transfer of water through the Delta as a "covered action," confirming its claim of authority to prohibit pumping if its reduced use standards are not met. (B1314-15.) In addition, the Council's regulations define "achieving" the goal of water supply reliability to mean, inter alia, that "[r]egions that use water from the Delta watershed will reduce their reliance on this water for reasonable and beneficial uses." (Cal. Code Regs., tit. 23, § 5001(h)(1)(B).) In the Council's view, a regulation that is designed to prohibit actions to obtain water supplies otherwise available from the Delta somehow *promotes* the coequal goal of water supply reliability for perennially water-short California.

[6] For brevity, hereafter the brief refers to WR P1. For the same reasons WR P1 is unlawful, regulation sections 5003 and 5001(h)(1)(B) are unlawful.

As we explain below, the Council has badly misconstrued its mission and authority under the Act. Under the Act, the Delta Plan must be designed to meet the needs of beneficial uses and sustain economic activity, not designed to cut off existing uses from Delta water supply. Nothing in the Act authorizes the Council to regulate the exercise of water rights, or second-guess water supply planning and management by local water suppliers well outside of the Delta as it seeks to do under WR P1. The Council's claim of authority depends upon a flawed construction of a single statement of the statewide reduced reliance policy in the Act, Water Code section 85021. WR P1 and the corresponding regulations are contrary to the Act and exceed the Council's authority, and are therefore void. (See *J. R. Norton*, *supra*, 26 Cal.3d at p. 29.)

1. WR P1 Is Contrary to the Act Because It Defeats Rather Than Promotes Water Supply Reliability

WR P1 is inimical to water supply reliability. Water supply reliability is diminished, not increased, by denying access to otherwise available Delta water supplies. By prohibiting Delta supplies needed by existing beneficial uses if each water supplier that receives water from a covered action fails to take steps to "adequately reduce" its reliance first, the Council is failing its statutory mandate to adopt a Delta Plan that improves water supply reliability.

The Council's view of water supply reliability conflicts with the Act. The Act requires the Council to "develop, adopt, and commence implementation of the Delta Plan pursuant to this part that *furthers* the coequal goals." (Wat. Code, § 85300(a), emphasis added.) The Act dictates how the Plan must do so: "The Delta Plan shall include measures to promote a more reliable water supply that address all of the following: (1) Meeting the needs for reasonable and beneficial uses of water. (2) sustaining the economic vitality of the state. (3) Improving water quality to protect human health and the environment." (*Id*., § 85302(d).) Hence, under the Act providing a more reliable water supply includes meeting the needs of beneficial uses, and sustaining the state's economy. WR P1 does the opposite.

Water Code section 85020 lists the "objectives" the Legislature declared are "inherent" in the coequal goals. These include: to manage "the Delta's water and environmental resources of the state over the long term," to "promote statewide water conservation, water use efficiency, and sustainable

water use," and to "improve the water conveyance system and expand statewide storage." (Wat. Code, § 85020(a), (d) and (f).) Mandating reduced use of otherwise available Delta water supplies for allegedly failing to adequately reduce reliance on the Delta is nowhere in this list.

Instead of trying to help meet needs, WR P1 threatens a forced reduction in use of water from the Delta, even if that water is needed to serve existing reasonable and beneficial uses or sustain economic activity.[7] WR P1 is therefore contrary to the Act.

2. WR P1 Is Unlawful Because the Council Has No Authority to Prohibit Export From or Transfers Through the Delta

Through WR P1, the Council claims authority to prevent export or transfer of Delta water regardless of whether such actions are authorized by the State Water Resources Control Board ("State Board"). That is, even if water is available for diversion from the Delta in compliance with all other laws and regulations, the Council still claims the authority to stop it. That plainly was not the Legislature's intent.

In a master response to comments, the Council provides the following as an example of how WR P1 would work to prohibit a project in the Delta based on a water supplier's failure to take actions prescribed by the Council outside the Delta:

> Some comments question, however, whether the Council can require that the validity of the covered action turn on, in part, whether it is needed because, say, a Southern California recipient water supplier is failing to conserve water in accordance with the regulation.
>
> The Council's authority can be seen by using a proposed expanded Delta intake as an example:
>
> 1) Pumping water out of the Delta may have significant negative impacts on the

[7] One way to reduce impacts on the Delta is to allow for diversion of more water during periods of high flow (when it will simply be lost to the ocean if not taken); less water would then be needed from the Delta during periods of low flow when it is needed there for environmental reasons. On the water supply side, that is what the BDCP is designed to accomplish. (See Section IV.C, below.) WR P1 and the other policies frustrate that objective by preventing the ability to divert surplus water when it is available to take without harm, and they are therefore contrary to the Act and the BDCP. Reducing reliance on the Delta during dry periods is not the same as mandating that water diverters take less water overall from the Delta. Reducing diversions when there is surplus water and high flows would frustrate one of the Act's co-equal goals <u>and</u> one of the intended purposes of the BDCP.

> Delta's ecosystem and an expanded intake therefore may be contrary to the statutory goal of "protecting, restoring and enhancing the Delta ecosystem." (Water Code, § 85054.)
>
> 2) The expanded intake should nevertheless be allowed if it is needed to achieve the coequal goal of "providing a more reliable water supply for California." (Water Code,§ 85054.)
>
> 3) But because in this example the water supply goal could be met through out-of-Delta measures without undermining the ecosystem goal, the expanded in-Delta intake is not justified and is inconsistent with the Delta Plan.

(E1076-77.)

Water Code section 85210 lists the powers granted the Council. The power to prohibit exports from or transfers through the Delta because a water supplier has allegedly failed to do enough to reduce reliance outside the Delta is not on the list. As demonstrated above, the Delta is a critical source of the state's water supply, which is expressly why the Act was adopted. If the Legislature had intended to take the radical step of cutting off water supplies from the Delta unless each water supplier in each region that relies on water from the Delta watershed first complied with the undefined and broadly stated reduced reliance policy, presumably it would have said so expressly. (See *Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1325 ["…'[w]e do not presume that the Legislature intends, when it enacts a statute, to overthrow long-established principles of law unless such intention is clearly expressed or necessarily implied'"].)

Instead, the Act expressly denies the Council that power. First, the Council can only hear appeals of certifications of consistency for covered actions. (Wat. Code, § 85225.20.) "Covered actions" must occur in whole or in part *in the Delta or Suisun Marsh*. (*Id*., § 85057.5(a)(1).) Nothing in the Act authorizes the Council to regulate the alleged *causes* of covered actions much less causes that occur outside the Delta. That alone is dispositive of the invalidity of WR P1.

The Council claims that it must have this implied authority, or else it could not "promote" statewide water use efficiency and reduced reliance. (E1077-78.) But, as demonstrated, the Council lacks the authority to mandate reduced reliance because the Legislature expressly limited the Council's appeal authority to actions in the Delta. The only actions the Delta Plan may "identify" to be taken outside the Delta relate to those that "significantly reduce flood risks in the Delta." (Wat. Code, § 85307(a).) In addition, the Council's construction of the statute would substitute "require" for

the word "promote," thus reading the express language out of sections 85300, 85302, 85303 and 85308 and inserting words more to the Council's liking – something neither the Council nor a court is permitted to do. (See *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1118 ["Courts should give meaning to every word of a statute if possible, and should avoid a construction making any word surplusage. [Citation.]"].)

Second, the plain language of section 85021 itself imposes the duty to reduce reliance by investing in measures to increase local supplies and stretch them further to meet future needs on "each region" that relies on water from the Delta watershed, not on each "water supplier" as defined by the Council. This is consistent with the structure of the Water Code, which, as demonstrated in Section IV.A.3., below, imposes the duty to conduct water supply planning to meet future water supply needs on water suppliers, not the Council.

Third, Water Code section 85031(a) provides that the Act does not "diminish, impair, or otherwise affect in any manner whatsoever any . . . water rights protections . . . provided under the law." Section 85031(d) states that, unless otherwise expressly provided, the Act does not supersede, reduce, or otherwise affect existing procedural and substantive legal protections relating to the State Board's regulation of the diversion and use of water. And section 85032(i) provides that nothing in the Act affects "[a]ny water right." The State Board is the only administrative agency authorized by law to condition water rights; even then, it may do so only after public notice and extensive quasi-judicial proceedings designed to protect the rights holders. (Wat. Code, § 174(a); see *Envtl. Defense Fund, Inc. v. East Bay Mun. Utility Dist*. (1977) 20 Cal.3d 327, 341-342, judg. vacated and cause remanded for reconsideration (1980) 26 Cal.3d 183 ["The statutes vest the [State Board] with full authority to 'exercise the adjudicatory and regulatory functions of the state in the field of water resources.'"]; *Audubon Soc. v. Super. Ct.* (1983) 33 Cal.3d 419, 449 ["we have discerned a legislative intent to grant the Water Board a 'broad,' 'open-ended,' 'expansive' authority to undertake comprehensive planning and allocation of water resources"].) WR P1 is contrary to the Act because it would usurp the plenary authority of the State Board (and the judiciary) to adjudicate water rights.

Further confirmation that the Legislature did not intend for the Council to be the arbiter of what water may be exported from or transferred through the Delta is found in the definition of

"covered action." (Wat. Code § 85057.5.) The "routine maintenance and operation of the State Water Project or the federal Central Valley Project" is specifically excluded from "covered action." (*Id.*, § 85057.5(b)(2).) The routine operations of these two projects, on which the Water Contractor Petitioners depend, cover much of the water exported from or transferred through the Delta.

Finally, the legislative history of the Act confirms the Council was not granted the power to regulate the exercise of water rights. The final analysis of SBX7-1 considered by the Senate before voting on the Act concludes that the various savings clauses in the bill were included specifically to "maintain SWRCB jurisdiction and preserve regulatory authority generally, in order to clarify that the new Delta Stewardship Council is NOT a super-regulatory agency that trumps other regulatory agencies such as [the State Board] and [DFW]." (L21542 [Bill Analysis for SBX7-1 as amended November 2, 2009]; K10945 [citing Bill Analysis].)

The Council has no authority to decide what water may be transferred through or exported from the Delta, and WR P1 is inconsistent with the Act. Thus, WR P1 is unlawful. (*Assn. for Retarded Citizens v. Dept. of Dev. Servs.* (1985) 38 Cal.3d 384, 391 ("*AFRC*").)

3. WR P1(c) Is Unlawful Because the Council Has No Authority to Second-Guess Local Water Supply Planning and Management Outside the Delta

WR P1(c)(1) provides that to demonstrate an "adequate contribution" to the Council's goal of reducing use of water from the Delta, each water supplier[8] that would receive Delta water exports or through-Delta water transfers must "have done all of the following:"

[8] "Water supplier" is defined at Cal. Code Regs., tit. 23, § 5001(ii), and includes "urban retail water supplier" defined as a "water supplier . . . that directly provides potable municipal water to more than 3,000 end users or that supplies more than 3,000 acre-feet of potable water annually at retail for municipal purposes" (*id.*, § 5001(hh)(1)); "urban wholesale water supplier" defined as "a water supplier . . . that provides more than 3,000 acre-feet of potable water annually at wholesale for municipal purposes" (*id.*, § 5001(hh)(2)); and "agricultural water supplier," defined as both retail and wholesale suppliers, including "[a] water supplier . . . providing water to 10,000 or more irrigated acres, excluding recycled water; and [¶] [a] water supplier or contractor for water, regardless of the basis of the water right, that distributes or sells water for ultimate resale to customers" (*id.*, § 5001(c)(1)-(2)). These regulatory definitions duplicate those found in Division 6 of the Water Code. (Wat. Code, §§ 10608.12(a) [agricultural water supplier], (p) [urban retail water supplier], (r) [urban wholesale water supplier].)

> (A) Completed a current Urban or Agricultural Water Management Plan (Plan) which has been reviewed by the California Department of Water Resources . . . ;
>
> (B) Identified, evaluated, and commenced implementation, consistent with the implementation schedule set forth in the Plan, of all programs and projects included in the Plan that are locally cost effective and technically feasible which reduce reliance on the Delta; and
>
> (C) Included in the Plan, commencing in 2015, the expected outcome for measurable reduction in Delta reliance and improvement in regional self-reliance. The expected outcome for measurable reduction in Delta reliance and improvement in regional self-reliance shall be reported in the Plan as the reduction in the amount of water used, or in the percentage of water used, from the Delta watershed. For the purposes of reporting, water efficiency is considered a new source of water supply, consistent with Water Code section 1011(a).

(B569; Cal. Code Regs., tit. 23, § 5003(c).)

This is further regulatory overreach. The Act expressly limits the Council's consistency appeal authority to "covered actions," which are plans, programs, or projects that "[w]ill occur, in whole or in part, *within the boundaries of the Delta or Suisun Marsh*." (Wat. Code § 85057.5(a)(1), emphasis added.) For most water suppliers, the planning and implementation activities listed in WR P1(c)(1) (A)-(C) will occur far outside the boundaries of the Delta. That activity will instead occur within the boundaries each local jurisdiction, many of which are hundreds of miles from the Delta.

Judging the performance of local water supply agencies throughout much of the state is not on the list of the Council's powers in Water Code section 85210. As stated, the general reduced reliance policy objective in section 85021 expressly places the responsibility for investing in water use efficiency, recycling advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts on "*each region* that depends on water from the Delta watershed . . . ," *not* the Council. (Wat. Code, § 85021, emphasis added.) Imposing this duty on "regions" of the state is consistent with the extensive body of law in the Water Code that give each water supplier the duty and discretion to undertake water supply planning to meet the needs of their jurisdictions.

The Water Code contains specific provisions governing urban, agricultural, and regional water management planning that comprise a carefully crafted comprehensive scheme for the management of California's water supplies. Division 6 of the Water Code (§§ 10000-12999) is titled "Conservation,

Development, and Utilization of State Water Resources." It provides a comprehensive treatment of state management of water supply, and it delegates the obligation to plan to meet future water supply to each supplier, which only makes sense given the diversity of water needs, economic conditions, local resources, growth projections, and continually changing circumstances facing each water supplier. Division 6 provides for integrated regional water management plans (Pt. 2.2, §§ 10530-10550); sustainable water use and demand reduction, including a state mandate to reduce urban per capita water use by 20-percent by the end of 2020 (Pt. 2.55, §§ 10608-10608.64); urban water management plans (Pt. 2.6, §§ 10610-10656); and agricultural water management plans (Pt. 2.8, §§ 10800-18053), among other parts dealing with groundwater and other aspects of water supply.

The Urban Water Management Planning Act (Wat. Code, §§ 10610 – 10657), e.g., is "intended to provide assistance to water agencies in carrying out their long-term resource planning responsibilities to ensure adequate water supplies to meet existing and future demands for water." (*Id*., § 10610.2.) Accordingly, urban water suppliers are required to prepare an urban water management plan that describes and evaluates the water supplies necessary to meet projected increases in demands over at least a 20-year period. (*Id*., §§ 10621, 10631(a).) Urban water suppliers must base their long-range supply plans on "data from the state, regional, or local service agency population projections" (*id*., § 10631) and prepare their plans in coordination with appropriate planning agencies, cities, and counties (*id*., §§ 10620 (d)(2), 10644) in order that "there be close coordination and consultation between California's water supply agencies and California's land use approval agencies to ensure that proper water supply planning occurs in order to accommodate projects that will result in increased demands on water supplies." (Gov. Code, § 65352.5.)

Notably, the consequence of a failure to adopt a water plan is the threat of litigation to compel compliance (Wat. Code, §§ 10650(a) [urban plans], 10850(a)(1) [agricultural plans]) and ineligibility for certain state funding or drought assistance, which is an extremely powerful incentive (*id*., §§ 10608.56(a) [urban retail suppliers], 10608.56(b) [agricultural water suppliers]). In contrast, WR P1 would require each individual water supplier (not "each region") that receives water from the Delta to include a new "reduced reliance" element in its water management plans and track and report implementation of all locally cost effective projects and how much they contribute to reduced reliance

on the Delta. (B569; Cal. Code Regs., tit. 23, § 5003(c).) If the Legislature had intended to add new mandates and a potential loss of Delta water supplies for failure to modify water management plans to achieve reduced reliance to the Water Code, it would have done so by amending Division 6. The Council is not at liberty to surreptitiously add new requirements to Division 6 where the Legislature chose not to do so.

In addition, other provisions of the comprehensive package of legislation of which the Act is a part addressed the "statewide strategy of investing in improved regional supplies, conservation, and water use efficiency" referenced in the reduced reliance policy. (Wat. Code, § 85021.) The bond approved with the Act included provisions for funding the very kinds of projects that could reduce reliance on the Delta and Delta watershed to meet California's future water supply needs by funding the kinds of projects and programs that contribute to regional self-reliance. (Former Wat. Code, §§ 79780 [$1 billion for water recycling, desalination, and contaminant removal projects], 79784(a)(1) [$250 million for water conservation and water use efficiency plans, projects, and programs].) That measure also included a provision making an urban water supplier ineligible for certain bond funds for water supply reliability projects if it fails to adopt an urban water management plan. (Former Wat. Code, § 79722(b).) The new water bond that recently replaced it includes similar provisions.[9] In addition, section 8 of SBX7-8, also adopted as part of the 2009 package of water bills, provided $546 million for water supply planning. (Stats. 2009, 7th Ex. Sess. 2009, ch. 2 (SBX7-8).)

In sum, by attempting in WR P1(c) to thrust itself into local water supply planning and implementation, the Council was not responding to any gap in water supply regulation or management that the Legislature intended the Council to fill with new regulation. To the contrary, that ground is already well-covered by the Legislature. Instead, the Council was extending far beyond the role defined for it in the Act, which is limited to covered actions within the Delta and Suisun Marsh. WR P1 exceeds the Council's authority under the Act, and hence must be set aside.

---

[9] E.g., Wat. Code, §§ 79740 [$810 million for projects that address climate change and contribute to regional water security], 79750 [$2.7 billion for public benefits of water storage project], 79765 [$725 million for recycling and advanced treatment technology projects].

4. The Council's Reliance on the Policy Statement in Section 85021 as Authority For WR P1 Is Misplaced

The Council relies upon the policy statement in Water Code section 85021 as authority for WR P1, and its peculiar notion that water supply reliability will be improved if it denies water users access to otherwise available Delta water supplies despite the need for such water.

The Council has misconstrued section 85021. Section 85021 speaks to reducing reliance on the Delta to meet "future water supply needs;" California has a steadily growing population and economy that will give rise to needs that do not exist today. WR P1, however, is not limited to future needs. WR P1 seeks to mandate reduced use of Delta water for even needs existing today. Further, section 85021 establishes a "statewide strategy of investment" to meet future needs, including investment to foster improved regional self-reliance. WR P1, by contrast, is a command-and-control regulation, one that mandates reduced use of Delta water regardless of whether the investment strategy described in section 85021 reduces the need for Delta water to meet even current beneficial uses.

The Council's reliance upon section 85021 as authority for WR P1 is misplaced for the further reason that on its face, it is not a grant of regulatory authority to the Council. It does not authorize or direct the Council to do anything. It is a policy statement directed to various "regions" of the state. The provisions of the Act governing the missions, duties and responsibilities of the Council, sections 85210 through 85214, and the contents of the Delta Plan, sections 85300 through 85350, nowhere mention reduced use of water from the Delta as a requirement or goal.

While the Court need go no further than the plain language of the Act, the legislative history confirms that the Council has misconstrued section 85021. In its original version, proposed Water Code section 85021 read:

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

(Exhibit 1 to Declaration of Elizabeth L. Leeper in Support of Request for Judicial Notice ("RJN Exh. 1"), p. 5, emphasis added.) This version of section 85021 was discussed among key legislators at a

September 3, 2009, joint Senate and Assembly conference committee hearing discussing the various bills that would result in the Act, including SBX7-1, which established the Council and outlined in detail the contents and purposes of the Delta Plan:

> ***Senator Aanestad***: "To say that we are going to be able to decrease dependency on the Delta is an impossible goal . . . . The solution is the second part of this paragraph [revised section 85021 referring to statewide strategy of investment] and that is to improve efficiency, conservation, etc. . . . , it's foolishness to say we are going to become less dependent on the Delta. I think it's imperative to say we're going to be more responsible with the water that goes in the Delta . . . ."

(RJN Exh. 6, at Disc 1, 1:21:01 – 1:23:07; K10954.)

The following colloquy between Senator Steinberg (Senate Majority Leader and coauthor of SBX7-1) and Assemblyman Huffman (Chairman of the Assembly Water, Parks and Wildlife Committee and author of Preprint AB 1, the Assembly's version of SBX7-1) demonstrates that the reduced reliance policy is just that: a policy, not an enforceable mandate:

> ***Senator Steinberg***: "[O]ne question for consideration is whether or not the proponents of this language [section 85021] intended it to have legal import or is it a statement of intent."
>
> ***Assemblyman Huffman***: "I think, Mr. Chair, *we know how to write mandates when we want to, that's not how this reads, this reads as a broad statement of policy of a goal that will guide things going forward* . . . . You've reduced dependence by following some of the conservation measures that we are asking folks to do in separate legislation . . . . So, I think *it reflects a prudent policy guidance for the state going forward but certainly not a mandate*."
>
> ***Senator Cogdill*** (Lead sponsor of the companion Water Bond): "[I]t ought to be more about how we make the Delta a more reliable source of water rather than to say we are going to do everything we can to limit exports from that very important source."

(RJN Exh. 6, at Disc 1, 1:26:49 – 1:27:03, 1:27:06 – 1:28:07, 1:30:51 – 1:31:04; K10954, emphasis added.)

Section 85201 was amended on September 9, 2009, after the September 3 discussions quoted above, to the language adopted ultimately and now codified in section 85021:

> The policy of the State of California is to *reduce reliance on the Delta* in meeting California's *future water supply needs* through a *statewide strategy of investing* in improved regional supplies, conservation, and water-use efficiency. . . .

(Wat. Code, § 85021, emphasis added.)

The significant changes to the first sentence are italicized to emphasize the differences

between the earlier draft and the ultimately adopted version. The original policy statement to "reduce dependence" on water from the Delta watershed "over the long-term" was modified to "reduce reliance" on the Delta "in meeting California's future water supply needs." This confirms that helping to meet future, increased demand from sources other than the Delta is the focus of section 85021. The second significant change is the addition of the "statewide strategy of investment" language. This reflects legislative intent that meeting section 85021's policy directive is to be achieved on a "statewide" basis that would include local initiatives and investments, statewide bond initiatives, or other funding mechanisms, not regulatory dictates by the Council.

For the foregoing reasons, the Court should find that WR P1 is in excess of the Council's authority and contrary to the Act, and therefore invalid.

5. The Record Lacks Substantial Evidence that WR P1 Is Reasonably Necessary

Even if the Council had the authority to adopt WR P1, which it does not, the regulation is void because it lacks the support of substantial evidence in the rulemaking record. (Gov. Code, § 11350(b)(1).) The Council claims that WR P1 is necessary because some water suppliers have not taken steps to adequately reduce their reliance on the Delta. (B568.) Yet the Delta Plan itself documents numerous "success stories" both inside and outside the Delta that demonstrate that WR P1 is not reasonably necessary to solve the stated "problem." (B560-2.)

The relevant section of Chapter 3 relies on two Summary of Status of Urban Water Management Plans prepared by DWR. (L9029 et seq. [2005]; L10359 et seq. [2012].) Rather than supporting the Delta Plan's claim that water suppliers have failed to implement measures to reduce Delta reliance, these reports only note that all agencies have targets to reduce water usage, and most have, in fact, prepared urban water management plans demonstrating how they plan to meet these targets. (L1369; L1376-92.) The reports also note that a few identified public agencies did not timely adopt plans in 2005 or 2012. (L9034; L9045-56; L10393-95.) But neither the Delta Plan nor the referenced DWR reports discuss whether the latter agencies rely on water from the Delta, to what extent they do so, or whether they are or are not taking steps to invest in increased reliability. It is pure speculation whether any of those agencies' lack of an adopted plan in 2005 or 2012 means they

are not conserving water, developing new supplies, recycling or taking other steps that would, over time, reduce reliance on the Delta. Speculation is not substantial evidence. (*Cal. Assn. of Med. Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th 286, 306.) In addition, even if there were substantial evidence in the record that supported the necessity for WR P1, the Council has utterly failed to "adequately consider[] all relevant factors" and "demonstrate[] a rational connection between those factors, the choice made, and the purposes of the enabling statute." (*Am. Coatings Assn. v. S. Coast Air Quality Dist.* (2012) 54 Cal.4th 446, 460-61.) Thus, WR P1 lacks the support of substantial evidence in the rulemaking record and is void.

B. <u>The Delta Plan's Appeals Process Is Void as Contrary to the Act</u>

Whether the Council has the authority to implement the Delta Plan's appeals process—found in Chapter 2 and Appendix D of the Delta Plan (B517-18; B1277-81)—is a straightforward question of statutory construction. "If the language of the statute is unambiguous, the plain meaning governs." (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1146.)

The Council has interpreted the Act far too broadly, in a manner that gives the Council virtual veto authority over actions it believes are inconsistent with the Delta Plan.[10] In this case, the plain language of the Act, its statutory context, and its legislative history all demonstrate that the Council lacks authority to implement the appeals process described in the Delta Plan.

1. The Act's Plain Language Vests Discretion to Proceed with a Covered Action with the Certifying Agency, Not the Council

Pursuant to the Act, prior to initiating implementation of any covered action, the relevant state or local agency ("certifying agency") must prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan, and then submit that certification to the Council. (Wat. Code, § 85225.) Absent an appeal, the certifying agency may continue to pursue regulatory approvals and implement the action. The Council's role under the Act is

---

[10] Although the Council's interpretation of the Act is entitled to consideration, "[i]ts power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation." (*Yamaha, supra,* 19 Cal.4th at p. 7.) An agency's interpretation may be of "little worth," e.g. if the agency interpretation "alters or enlarges the terms of a statute." (*Id.* at p. 8; *Traverso v. People ex rel. Dept. of Transp.* (1996) 46 Cal.App.4th 1197, 1206.)

to review Delta Plan certifications of consistency for the support of substantial evidence if and when a consistency appeal is accepted for review by the Council. (*Id*., §§ 85225-85225.30.) The substantial evidence standard requires the Council to defer to the certifying agency's discretion, i.e., if the evidence supports the agency's certification, the Council must deny the appeal because it cannot reweigh the evidence or substitute its judgment for that of the agency. (*SN Sands Corp., supra,* 167 Cal.App.4th at p. 191.) If a certification is appealed, the Council may reject hearing the appeal, deny the appeal, or remand the matter to the certifying agency. (Wat. Code, §§ 85225.10, 85225.25.) Section 85225.25 of the Act explains that the agency—not the Council—determines whether to proceed with the covered action after a remand:

> Upon remand, *the state or local agency may determine whether to proceed with the covered action*. If the agency decides to proceed with the action *or* with the action as modified to respond to the findings of the council, the agency shall, prior to proceeding with the action, file a revised certification . . . . (Emphasis added.)

Under the plain language of section 85225.25, the Council's appellate review is limited to a single appeal[11] of any certification of consistency, and the certifying agency has the discretion to either modify the action in response to a remand from the Council before proceeding, or to proceed without modification. The only requirement for the agency to proceed is the filing of a revised certification of consistency. (Wat. Code, § 85225.25.) Nothing in section 85225.25 prohibits the agency from proceeding with the covered action even if the Council has found a lack of substantial evidence for the certification, so long as the agency files a revised certification addressing the Council's findings. The Act expressly leaves the ultimate decision on how and whether to implement the covered action with the certifying agency.

Contrary to section 85225.25's plain language, the Council seeks to invest itself with veto authority over actions it believes are inconsistent with the Delta Plan. The Delta Plan states that, if an

---

[11] Limiting the Council's review to a single appeal makes practical sense in addition to being consistent with legislative intent. Subjecting an agency to unlimited appeals could result in a situation where the agency would be precluded from ever challenging the Council's determination in court, as the agency would never know whether it had exhausted its administrative remedies, effectively making exhaustion impossible. (See *Payne v. Anaheim Memorial Med. Ctr.* (2005) 130 Cal.App.4th 729, 743.)

appeal is filed and "[i]f the covered action is found to be inconsistent, the project *may not proceed* until it is revised so that it is consistent with the Delta Plan." (B518, emphasis added.) Appendix D further describes the Council's adopted appeals process, specifying that, if an appeal is filed and granted, the certifying agency may not proceed with the "covered action which is the subject of an appeal" unless one of three conditions is met: (1) the Council denies the appeal, (2) no subsequent appeal is filed, or (3) the Council dismisses the appeal. (B1281.)

The Delta Plan's appeals process violates the Act, which provides that the certifying agency has the discretion to proceed with the covered action after a remand from the Council, provided only that the agency files a revised certification of consistency. (Wat. Code, § 85225.25.) Contrary to the Act, the Council has promulgated a process whereby it can require specific changes in a covered action before the certifying agency may proceed to implement the project. (B518.)

2. The Act's Legislative History Shows the Legislature Removed Provisions that Would Have Authorized the Council to Prevent Inconsistent Covered Actions

Even if section 85225.25 were ambiguous, the Act's legislative history confirms the Legislature's intent not to give the Council veto authority. (See *Miklosy v. Regents of U.C.* (2008) 44 Cal.4th 876, 888.) To the contrary, the legislative history confirms that the intended to empower the certifying agency to determine whether to implement a covered action, not the Council.

The Delta Vision Strategic Plan ("Strategic Plan"), which preceded and informed the debate concerning governance issues during development of the Act, recommended creation of a "California Delta Ecosystem and Water Council" that would be a "regulatory and oversight body" with numerous, broad regulatory authorities. (L3352.) These would have included the "ability to determine consistency of any project proposed by or approved by a state agency or local government with its adopted plan" and the ability to "[e]nsure federal and state consistency with the [Plan]." (L3354-55.) However, the Legislature rejected this recommendation.

The Act's legislative history demonstrates that the Legislature purposefully removed provisions that would have authorized the Council to prevent an inconsistent covered action from being implemented. Early versions and precursors to the Act included provisions that would have given the Council the type of broad regulatory authorities described in the Strategic Plan. For

example, the February 26, 2009 version of SB 12—a precursor to the Act—included section 79870 that stated: "the council shall do all of the following: (d) Ensure that federal and state actions are consistent with the plan." (RJN Exh. 2, p. 11.) Several months later, the September 9, 2009 Proposed Conference Report No. 1 for SB 12 included a new provision, section 85225.25, which provided in relevant part:

> Upon remand, the state or local public agency may determine not to proceed with the covered action or may modify the appealed action and resubmit the certification of consistency to the council. *A proposed covered action appealed pursuant to these provisions and remanded to the state or local public agency shall not be implemented until the council has adopted written findings, based on substantial evidence in the record, that the covered action, as modified, is consistent with the Delta Plan.*

(RJN Exh. 3, p. 12, emphasis added.) The appeals process in this version of the legislation would have given the Council the ability it now asserts: to ensure ultimate consistency with the Delta Plan. However, what might have been is not what came to be.

The Legislature significantly changed section 85225.25 from the September 9, 2009 version prior to enacting the Act. First, section 85225.25 became part of SBX7-1, which was introduced October 23, 2009. The version of section 85225.25 in the October 23, 2009 version of SBX7-1 provided in relevant part:

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

(RJN Exh. 4, p. 68, emphasis added.) The difference between the September 9 and October 23 version of section 85225.25 is significant. The later version gave the certifying agency the power to "determine whether to proceed with the covered action," *and withdrew the power to stop it from the Council*. This reassignment of authority remained in SBX7-1 as it was approved by the Governor on November 12. (RJN Exh. 5, p. 27.) The amendment is determinative. (See *City of Long Beach v. Workers' Comp. Appeals Bd.* (2005) 126 Cal.App.4th 298, 315 [noting that amendments to statute that removed a requirement led to "[t]he inescapable conclusion . . . that the Legislature intended to remove the burden from employees . . ."]; *Traverso v. People ex rel. Dept. of Transp.* (1996) 46

Cal.App.4th 1197, 1207.)

3. Legislation Enacted Contemporaneous with the Act Demonstrates the Legislature Knew How to Give an Agency the Final Word on Consistency Determinations and Chose Not to Do So for the Council

In interpreting section 85225.25, the Court may also look to the content of existing related laws and simultaneously enacted laws to clarify ambiguities. (See *People v. Bunyard* (1988) 45 Cal.3d 1189, 1238; *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.) "The court should take into account matters such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy, and contemporaneous construction." (*Thornburg v. Super. Ct.* (2006) 138 Cal.App.4th 43, 49, internal citations omitted.) When the Legislature enacted section 85225.25, it also enacted legislation creating an appeals process for the Delta Protection Commission ("DPC"). The DPC appeals process is dramatically different from the Council appeals process provided in the Act. The contrast demonstrates that the Legislature knows how to grant land use authority when it wants to, and could have, but chose not to endow the Council with such authority.

In Public Resources Code section 29764, the Legislature expressly recognized that the DPC has specified land use authority within the primary zone of the Delta. Specifically, the DPC is required to adopt and periodically update a resources management plan ("RMP") for the primary zone. (PRC, § 29760.) Local governments in the Delta must then amend their general plans to render them consistent with the RMP in the primary zone, and submit amendments to the DPC. (*Id.*, § 29763.) The DPC must then review the general plan amendments and, if they are consistent with the RMP, approve them. (*Id.*, § 29763.5.) Once approved by the DPC, local land use agencies in the Delta counties must adopt the approved amended general plans within a certain time. (*Id.*, § 29763.8.) While the DPC determines in the first instance whether general plan amendments are consistent with the RPM, the Council cannot do the same relative to covered actions pursuant to the Act. Under the Act, the agency self-certifies that a proposed covered action is consistent with the Delta Plan.

The difference between the appeals processes is even more stark. If anyone is aggrieved by the action of a local government or other local agency in implementing the RMP, he or she may file an appeal with the DPC. (PRC, § 29770(a).) If an appeal is filed based on an alleged inconsistency with

the RMP, and if the DPC grants the appeal and remands to the local government or agency, "[u]pon remand, the local government or local agency *shall* modify the appealed action and resubmit the matter for review to the commission." (*Id*., § 29771, emphasis added.) In addition, "[a] proposed action appealed pursuant to this section *shall not be effective until the commission has adopted written findings . . . that the action is consistent with the [RMP] . . .*" (*Ibid*., emphasis added.) The underscored provisions are conspicuously absent from the appeals process the Legislature determined appropriate in Water Code section 85225.25.[12] Instead, upon remand under the Act, "the state or local agency *may determine whether to proceed with the covered action*." (Wat. Code, § 85225.25, emphasis added.) The Council's appeals process that allows for consecutive appeals of revised certifications is contrary to the Act and is therefore unlawful. (*Masonite Corp. v. Super. Ct.* (1994) 25 Cal.App.4th 1045, 1053.)

C. <u>The Delta Plan's Treatment of BDCP Is Void as Contrary to the Act</u>

Chapter 2 of the Delta Plan includes a provision that requires BDCP implementing agencies to certify that specific actions to implement the BDCP, such as an individual habitat restoration project must be certified as consistent with the BDCP itself. (B517.) In addition, Appendix D of the Delta Plan includes a procedure for an appeal of DFW's determination that the BDCP meets the requirements of the Act for incorporation into the Delta Plan. (B1283-84, Appendix D, §§ 23-23.5.) Both are unlawful.

1. The Council Lacks the Authority to Require Certifications of Consistency for BDCP Implementing Actions

The Delta Plan requires agencies implementing BDCP projects to file certifications of consistency with the Council.[13] (B517.) However, the Council "shall" incorporate the BDCP into the

---

[12] Significantly, the Legislature amended Public Resources Code section 29771 as part of the same comprehensive package of water bills that included the Act. (Stats. 2009-2010, 7th Ex. Sess., c. 5 (S.B. 1), § 32, eff. Feb. 3, 2010.) Thus, the Legislature was aware of the fundamental difference between the DPC and Council appeals processes.

[13] The Delta Plan provides: "If BDCP is incorporated [into the Delta Plan], an agency proposing a qualifying covered activity under BDCP that also meets the statutory definition of a covered action must file a short form certification of consistency with findings indicating only that the covered action

Delta Plan if the BDCP is approved as a Habitat Conservation Plan under the ESA, DFW approves it as a Natural Community Conservation Plan pursuant to the NCCPA, and DFW determines that the BDCP satisfies the requirements of section 85320 of the Act. (Wat. Code, § 85320(e).) Thus, requiring certifications of consistency for BDCP components of the Delta Plan itself is inconsistent with the Act, and therefore arbitrary and capricious. (*SN Sands*, *supra*, 167 Cal.App.4th at p. 191.) It would subject BDCP implementation to unnecessary certifications and appeals, and unduly delay implementation of a core component of the Delta Plan.

The plain text of the Act demonstrates that the Legislature contemplated that the BDCP would be completed *before* the Delta Plan, and once the Delta Plan was completed, it would have to incorporate the BDCP. Section 85057.5(b)(7)(B), which defines "covered action," states that a "project for which notice of approval or determination is filed *on or after the date on which the final Bay Delta Conservation Plan becomes effective, and before the date on which the Delta Plan becomes effective*, is not a covered action but shall be consistent with the [BDCP]." (Emphasis added.) As long as the BDCP satisfies certain requirements in section 85320, the Council *must* incorporate the BDCP into the Delta Plan. Thus, the Delta Plan must incorporate, and therefore must be consistent with the BDCP, not the other way around. And state and local agencies undertaking covered actions must certify consistency with the Delta Plan, which, once incorporated necessarily includes the BDCP as a part of the Delta Plan.

In addition, the Act's plain language limits the Council's role to that of a responsible agency commenting on the Draft BDCP and its EIR, hearing an appeal of a DFW determination that the BDCP meets the requirements of the Act, incorporating the BDCP into the Plan, receiving annual updates on implementation, and making non-binding recommendations on implementation, *not* hearing appeals of certifications of consistency of BDCP implementing actions that the Legislature determined are themselves to be a part of the Delta Plan itself. (Wat. Code, § 85320(c) [responsible agency in development of the EIR]; *id*., 85320(f) [DWR or any successor agencies charged with

---

is consistent with the BDCP. Consistency for these purposes shall be presumed if the certification filed by the agency includes a statement to that effect from DFW." (B517.) Notably, this provision in the Delta Plan is not codified in the regulation regarding the contents of certifications of consistency. (Cal. Code Regs., tit. 23, § 5002.)

implementing BDCP "shall report to the council on implementation at least once a year"]; *id*., 85320(e) [DFW's determination may be appealed to the Council]; *id*., 85320(g) [Council may make "recommendations" to implementing agencies regarding BDCP implementation, but "shall not change the terms and conditions of the permits issued by state and federal regulatory agencies"].) The Council's interpretation of the Act would read the annual report on BDCP implementation, and the express limitation on the Council's role in implementation to making "recommendations" out of the statute, something the Council cannot do. (See *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1118.)

Making BDCP implementing actions subject to the consistency appeals process, even if only pro forma, would result in attendant risk of appeals, delay, and added costs, thus impeding, not furthering achievement of the coequal goals. The Council's requirement to submit a certification of consistency allows for up to a 150-day delay period for appealed actions. The final BDCP will be a comprehensive conservation plan that must be implemented to guarantee incidental take authorization and regulatory assurances that DWR and other permittees will not be required to contribute more resources, including water supplies or financial commitments. (Fish & G. Code, § 2820(f); 50 C.F.R., §§ 17.22(b)(5), 17.32(b)(5).) If the Council has the power to stop or alter individual BDCP actions if they are appealed, then the Council has given itself the power to unravel BDCP and the water reliability and ecosystem restoration that it provides. This is in conflict with the Act, which repeatedly emphasizes the central role of the BDCP as part of the Delta Plan, including new conveyance in the Delta, as key to achieving the coequal goals. (Wat. Code, §§ 85320 [incorporation of BDCP into the Delta Plan], 85004(b) [providing a more reliable water supply involves "new and improved infrastructure, including . . . Delta conveyance facilities"], 85020(f) [improving water conveyance is inherent in the coequal goals], 85304 ["Delta Plan shall promote options for new and improved infrastructure relating to water conveyance in the Delta . . ."].)

The requirement to certify consistency of the BDCP with itself and the Plan of which it will be a central part is arbitrary and capricious, inconsistent with the Act, and in excess of the Council's authority. Thus, it must be struck down as void. (*J.R. Norton, supra,* 26 Cal.3d at p. 29.)

2. The Council Lacks the Authority to Decide a BDCP Appeal Based on a Preponderance of the Evidence Standard of Review and Extra-Record Evidence

At the same time the Council adopted an appeals process for certifications of consistency, it also adopted a process for hearing an appeal prior to the BDCP's incorporation into the Delta Plan. (B1283-84.) As previously discussed, under section 85320 of the Act, the Council must incorporate the BDCP into the Delta Plan if specific criteria are met. The same subdivision provides that DFW's determination that the BDCP meets the requirements of section 85320 "may be appealed to the Council." (*Ibid.*) But that section provides no process or standard of review for such an appeal.

Treating this as a blank check from the Legislature, the Council adopted an appeal procedure under which it will review DFW's determination under a preponderance of evidence standard of review. (B1283, Append. D, § 23.) Not only did the Council adopt a standard that is not appropriately deferential to DFW's expertise, it also opens DFW's determination up to attack based on extra-record evidence that can be introduced by any person, including non-parties that wish to "comment" on the appeal or testify at the hearing. (B1283-84, § 23.5(c)-(f).)

The procedure is unlawful for two reasons. First, the Council failed to comply with the procedural requirements of the APA; thus, it is void as an "underground regulation."[14] And second, the Council lacks the authority to adopt a preponderance of evidence standard as well as open up DFW's determination to attack utilizing extra-record information. Because the Legislature was silent, the Council must apply the same standard of review applicable to any administrative agency's factual determinations in an action for traditional mandamus, i.e., it may review the decision for the support of substantial evidence in the record before DFW at the time it reached its determination and may only set aside that determination if it finds it to be arbitrary and capricious.

The Council claims to have adopted the DFW appeal procedure and standard of review "in accordance with Water Code section 85225.30[,]" which provides for an exemption from APA

---

[14] An "underground regulation" is a regulation that is adopted without complying with APA, and is therefore void. (See Gov. Code, § 11340.5(a).) "'Regulation' means every rule, regulation, order, or standard of general application . . . adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." (*Id.*, § 11342.600.)

procedures.[15] (B768; B1283.) But section 85225.30 specifically exempts the adoption of administrative procedures governing appeals of *certifications of consistency*, not DFW's BDCP determination. (*Ibid*.) The cited section appears at the end of Part 3, Chapter 3 of the Act, §§ 85225-85225.30, and cannot reasonably be construed to apply to all appeals of any kind in the Act, including the appeal of a DFW determination in 85320(e), which appears in Part 4, Chapter 2. The term "appeal" appears in sections 85225.10-85225.25 immediately preceding 85225.30. Thus, reading the term in context, the legislative intent was specifically to only exempt adoption of administrative procedures governing appeals of covered action certifications of consistency. (See *LAUSD v. Garcia* (2013) 58 Cal.4th 175, 186; *Field v. Mans* (1995) 516 U.S. 59, 67 ["an express statutory requirement here, contrasted with statutory silence there, shows an intent to confine the requirement to the specified instance"].) Since the Council adopted the standard of review and appeal procedures pertaining to an appeal of DFW's BDCP determination without complying with the APA, it is an "underground regulation" that must be declared void. (Gov. Code, § 11340.5(a), (b); *People v. Medina* (2009) 171 Cal.App.4th 805, 813-14.)

Even if the Council's adoption of the BDCP appeal procedure were exempt from APA rulemaking procedures, the Council lacks the authority to adopt a preponderance of evidence standard and allow in extra-record evidence. First, it is inconsistent for the Council to claim that section 85225.30 exempts its appeal procedure for the DFW determination, while ignoring the substantial evidence standard of review specified in the immediately preceding section. (Wat. Code, § 85225.25.) Notably, this is the *only* specification of a standard of review in the Act, and it both requires deference to the action agency's determinations and limits the evidentiary scope to the record before the agency that took the action.

Second, the Act's lack of an explicit standard of review does not mean the Council is free to adopt any standard of its choosing. Here, the Legislature enacted the statute against the backdrop of well understood principles of review of administrative agency evidentiary determinations. "The

---

[15] The Council also cites as authority Water Code section 85320(e). (B1284.) But as stated, that section merely provides for an appeal to the Council, it does not expressly or implicitly authorize the Council's chosen standard.

Legislature, of course, is deemed to be aware of statutes and judicial decisions already in existence, and to have enacted or amended a statute in light thereof." (*People v. Yartz* (2005) 37 Cal.4th 529, 538, internal quotation marks and citation omitted.) Where, as here, DFW is required to make a fact-based determination, but not hold a hearing or accept evidence, the action would be subject to judicial review by way of a petition for traditional mandate under Code of Civil Procedure section 1085. (E.g., *Shelden v. Marin Co. Employees' Retirement Assn.* (2010) 189 Cal.App.4th 458, 463.)

Under the abuse of discretion standard, out of respect for the agency's authority and presumed expertise, a court may not substitute its judgment for that of the agency, and its determination must be upheld even if reasonable minds may disagree. (*Cal. Hosp. Assn. v. Maxwell-Jolly* (2010) 188 Cal.App.4th 559, 567-68; *Agosto v. Bd. of Trustees* (2010) 189 Cal.App.4th 330, 336.) Here, the Legislature acknowledged DFW to be the expert agency regarding BDCP's compliance with the specific requirements of section 85320.[16] This is why it provided the Council with authority to hear an appeal *if* one is filed. Indeed, absent an appeal, the Act requires the Council to incorporate the BDCP into the Delta Plan after holding at least one public hearing regarding its incorporation into the Delta Plan – expressly not a hearing to deliberate the BDCP's satisfaction of the statutory requirements for incorporation. (Wat. Code, § 85320(d)-(e).) However, as demonstrated, if DFW's determination is appealed, the Legislature intended the Council to defer to DFW's authority and expertise by reviewing DFW's determination for the support of substantial evidence only in the record before DFW. If the Legislature desired the Council to be the gatekeeper of the BDCP's incorporation into the Delta Plan it would have said so, and not relied instead on what would then be the superfluous expert judgment and expertise of DFW. It did not.

Thus, the Council's standard of review of DFW's BDCP determination must be rejected as an underground regulation, and as a regulation that is beyond the Council's authority. (*People v. Medina,*

---

[16] Sections 85320's requirements include a determination whether the BDCP (1) complies with the NCCP Act; (2) complies with CEQA, including a comprehensive review and analysis of "[a] reasonable range of flow criteria, rates of diversion, and other operational criteria required to satisfy the criteria for approval of a natural community conservation plan . . . [,]" a reasonable range of conveyance alternatives, the potential effects of climate change on conveyance alternatives and habitat restoration activities, impacts on migratory fish and aquatic resources, and the potential effects of each conveyance alternative on water quality. (Wat. Code, § 85320(a)-(b).)

supra, 171 Cal.App.4th at p. 813; *J.R. Norton, supra,* 26 Cal.3d at p. 29.)

D. <u>The Council Lacks the Authority to Treat Temporary Water Transfers as "Covered Actions"</u>

Where a statute empowers an administrative agency to adopt regulations, such regulations must be "consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." (Gov. Code, § 11342.2.) "Administrative action that is not authorized by, or is inconsistent with, acts of the Legislature is void." (*AFRC, supra,* 38 Cal.3d at p. 391.) In this case, the Council adopted a regulation that is inconsistent with the Act and with other existing law by placing a sunset provision on its "covered action" exemption for temporary water transfers. This limited exemption exceeds the Council's statutory authority and is void because CVP- and SWP-related temporary water transfers are completely exempt under the Act as part of routine operations and because such a limited exemption is in conflict with existing Water Code provisions and the Act.

1. Temporary Through-Delta Water Transfers Are Exempt as Part of SWP and CVP Routine Operations

The Council lacks the authority to establish a limited exemption for temporary water transfers because temporary water transfers fall within the Act's permanent exemption for routine SWP and CVP operations. Section 5001 of the Delta Plan Regulations defines what constitutes a "covered action" and also exempts certain categories of projects by identifying projects that will not have a "significant impact" for the purpose of determining whether a project meets the definition of a "covered action." (Cal. Code Regs., tit. 23, § 5001(j)(1), (dd)(3).) Among the exempted projects are:

> Temporary water transfers of up to one year in duration. This provision shall remain in effect only through December 31, 2016, and as of January 1, 2017, is repealed, unless the Council acts to extend the provision prior to that date.

(Cal. Code Regs., tit. 23, § 5001(dd)(3).) Thus, the Council has effectively allowed temporary water transfers to be treated as "covered actions" and subject to consistency review starting in 2017.

The Council lacks the statutory authority to establish this expiring exemption for temporary water transfers because the Act provides an express, complete exemption for the routine operation of the SWP and CVP (Wat. Code, § 85057.5(b)(2)), and temporary water transfers fall within routine operations. Although neither the Act nor the Delta Plan Regulations define "routine maintenance and

operation," this exemption is focused on the existing maintenance and operation of the SWP and CVP. Temporary transfers utilizing SWP and CVP facilities are part of the existing operations of these Projects and thus are the type of "routine operation" expressly exempted under the Act from the covered action definition. (*Ibid*.)[17] One-year temporary SWP- and CVP-related water transfers occur regularly. (See, e.g., *AquAlliance v. U.S. Bur. of Reclamation* (E.D. Cal. 2014) 2014 WL 3401390 [discussing transfers in recent years].) Such transfers are therefore "routine operations" of the SWP and CVP and expressly excluded from the definition of "covered action." Section 5001's limited exemption for temporary transfers is therefore invalid.

2. Treating Temporary Water Transfers as "Covered Actions" Would Be Inconsistent with the Existing Statutory Scheme and the Act

The Water Code provides a statutory scheme for certain temporary water transfers that ensures expeditious regulatory review of such transfers. (Wat. Code, § 1725 et seq.) Section 5001's limited exemption for temporary water transfers is inconsistent with the existing statutory scheme because it would require transfers to be treated as covered actions and potentially subject to a prolonged appeal process. Impeding time-sensitive temporary water transfers with a protracted regulatory review process is also inconsistent with the Act's goal of improved water supply reliability. Such "[a]dministrative action that is not authorized by, or is inconsistent with, acts of the Legislature is void." (*AFRC, supra*, 38 Cal.3d at p. 391.)

---

[17] The record includes ample evidence that both short- and long-term transfers through both the SWP and CVP are part of routine operations that are vital to providing reliable water supplies, especially in times of drought. (K6625-30 [Water Transfer Group comment explaining essential role and authority for SWP and CVP transfers for member agencies]; L22279-84 [Reclamation request for temporary change in place of use to facilitate exchange between CVP and SWP contractors]; L22254-78 [Metropolitan report of SWP and other water transfers from 2008-2010 contributing to adequate supplies in 2007-2010 drought]; L22369-75 [testimony of DWR water resource engineer regarding petition for long-term transfer between SWP and CVP water recipient lands]; L22320-29 [DWR and Reclamation Draft Technical Information for Water Transfers in 2011]; L22385-89 [Transfer Working Group report to the State Board explaining, among other things, the importance of water transfers for both municipal and agricultural water supply as well as supplies for environmental purposes, especially during drought conditions]; and M5579-80 [Council consultant's summary of one-year, temporary through-Delta transfers estimating that over 21 years there have been 65 such transfers totaling 2.69 million acre-feet of water].)

(a) Treating Temporary Water Transfers as Covered Actions Would Be Inconsistent with the Water Code's Existing Statutory Scheme

Courts "read every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness." (*Calatayud v. State* (1998) 18 Cal.4th 1057, 1065, internal quotations omitted.) Therefore, in evaluating the Council's regulations and their consistency with Act, the entire statutory scheme embodied in the Water Code should be considered and effectuated. The statutory scheme enables quick regulatory action for a proposed temporary water transfer that falls within the State Board's jurisdiction.[18] The Water Code sets forth the specific showing required for a temporary water transfer, imposes short time limits on the State Board's review of petitions for temporary changes (45 days, subject to one 20-day extension if needed, for the State Board to act on a petition for a temporary transfer), and places strict limits on the State Board's ability to deny or condition a petition for a temporary change. (Wat. Code, §§ 1725-27.) In addition, it includes an unconditional statutory exemption from CEQA. (*Id*., § 1729.) If a water transfer using the SWP or CVP were a covered action that could be subject to consistency review and one or more administrative appeals before the Council, that would defeat the legislative policy favoring temporary transfers, which are extremely time-sensitive. (See *id*., § 109(a) ["It is hereby declared to be the established policy of this state to facilitate the voluntary transfer of water and water rights where consistent with the public welfare of the place of export and the place of import."].)

In addition, imposing the consistency regulatory scheme to temporary water transfers is inconsistent with the legislative purpose of exempting such transfers from CEQA review. Temporary water transfers under the State Board's jurisdiction are statutorily exempt from CEQA pursuant to Water Code section 1729. Statutory exemptions are absolute; they reflect legislative policy determinations and are not subject to any exceptions. (*Sunset Sky Ranch Pilots Assn. v. Co. of Sacramento* (2009) 47 Cal.4th 902, 907.) Yet, despite the public policy reasons for expediting temporary transfers by exempting CEQA review, section 5001 of the Regulations would subject such

---

[18] The State Board's jurisdiction over transfers applies only to post-1914 appropriative water rights. (See Wat. Code, § 1725 [allowing permittees and licensees to temporarily change terms of use due to a water transfer].)

transfers to a new time-consuming consistency review. (Cal. Code Regs., tit. 23, § 5002(b)(3)-(4) [requiring documentation of the use of best available science "as relevant to the purpose and nature of the project" and adaptive management "appropriate to the scope of the covered action"].) Applying these CEQA-like provisions to temporary water transfers is inconsistent with the existing statutory CEQA exemption. The Council has no authority to amend or limit application of this exemption.

(b) Treating Temporary Water Transfers as Covered Actions Would Be Inconsistent with the Act's Saving Provision for Water Right Protections

Subjecting temporary water transfers to certifications of consistency and potential administrative appeals to the Council would also violate the procedural and substantive protections afforded to water rights holders who file petitions for temporary water transfers with the State Board, in contravention of the savings provisions in Water Code section 85031. Section 85031(d) states, in relevant part: "[U]nless otherwise expressly provided, nothing in this division supersedes, reduces, or otherwise affects existing legal protections, both procedural and substantive, relating to the state board's regulation of diversion and use of water, including, but not limited to . . . changes in water rights." (Wat. Code, § 85031(d).) This saving provision preserves and protects the existing regulatory framework governing water transfers and the changes in water rights necessary to accomplish the transfer. (See Wat. Code, Div. 2, Part 2, Chap. 10.5 §§ 1725-1745.11 [governing a "change of point of diversion, place of use, or purpose of use, involving the transfer of water"].)

Section 5001 of the Regulations is inconsistent with this saving provision because treating water transfers as covered actions and subject to Delta Plan consistency review would alter the regulatory standards and criteria applicable to water transfers. The Water Code provisions governing the State Board's review of water transfers provide legal protections to those seeking the water transfer and other water users, by providing the standards for review of requested transfers. (See Wat. Code, § 1727 [standard for temporary transfers].) Section 5001 significantly affects those standards by allowing transfers to be treated as covered actions starting in 2017 and subjecting transfers to consistency review with the Delta Plan's policies, including WR P1's "reduced reliance" mandate. Therefore, section 5001's limited exemption for temporary transfers is inconsistent with the Act because it would affect the existing legal protections regarding review of water transfers by imposing

additional standards on water transfers.

(c) Treating Temporary Water Transfers as Covered Actions Would Be Inconsistent with the Act's Goal of Improved Water Supply Reliability

A regulation which "impairs the scope of a statute must be declared void." (*Agnew v. State Bd. of Equalization* (1999) 21 Cal.4th 310, 321.) The time required to go through the Council's consistency process may make one-year transfers ineffective, reducing the tools available for agencies to reliably provide water to their customers. Accordingly, section 5001's limited exemption for temporary transfers is inconsistent with the Act's goal of improving water supply reliability because, given the purpose of the transfer and its limited duration, time is often, if not always, of the essence. If not exempted from the definition of "covered action," delays caused by, for example, challenges to consistency determinations or determinations that given transfers will not have significant impacts on the achievement of the coequal goals would likely impair, if not preclude, such transfers precisely when they are most needed.

For all of the above reasons, the Court should declare section 5001's limited exemption that would allow transfers to be treated as "covered actions" invalid.

E. <u>The Policy and Regulation Mandating Transparency in Water Contracting Exceed the Council's Authority and the Regulation Is Contrary to APA Standards</u>

1. The Council Has No Authority to Regulate Contract Negotiations Because They Are Part of Routine CVP and SWP Operations, Not Covered Actions

WR P2 of the Delta Plan, codified as section 5004 of the Regulations, exceeds the Council's authority under the Act. This section provides that the contracting process for SWP and/or CVP water "must be done in a publicly transparent manner" consistent with applicable policies of DWR and Reclamation. (B450; Cal. Code Regs., tit. 23, § 5004(a).) There is no provision in the Act that could reasonably be construed to authorize the Council to regulate SWP or CVP water contracting, yet section 5004 appears to be an attempt to administratively declare that DWR's and Reclamation's administration of their contracts are covered actions. The Legislature, however, has explicitly provided otherwise by excluding routine operations of the SWP and CVP—which includes routine execution and amendment of a water supply contract—in Water Code section 85057.5(b)(2). The Act

does not authorize the Council to regulate the contract renewal process, and the Council's attempt to do so is inconsistent with the Act. Thus WR P2 and section 5004 of the Regulations is unlawful.

2. Section 5004 of the Delta Plan Regulations Is Duplicative and Unnecessary

To be valid, a regulation must be "reasonably necessary to effectuate the purpose of the [enabling] statute." (Gov. Code, § 11342.2.) In addition, regulations are subject to the standards of necessity and non-duplication. (*Id.*, § 11349.1; see *Sims v. Dept. of Corr. & Rehab.* (2013) 216 Cal.App.4th 1059, 1080-81.) Section 5004 is duplicative of existing statutory and policy language. DWR and Reclamation have contracting processes for water from the SWP and CVP, respectively, that require transparency. (B1190-1207.) There is no need for the Council to repeat those requirements in its regulations. In fact, the Council itself described section 5004 as enumerating that "existing and future State and federal project water contracts will follow *established* procedures, including the publicly transparent contracting process." (N851, emphasis added.) There is no need for the Council to adopt a regulation incorporating already applicable and established procedures, and no evidence that the procedures are not being followed. Section 5004 of the Regulations should therefore be declared as invalid because it is unnecessary and duplicative.

F. <u>The Council Failed to Substantially Comply with the APA Requirements to Assess the Economic Impact of its Proposed Regulations</u>

A court may declare a regulation invalid for "substantial failure" to comply with the APA. (Gov. Code, § 11350(a); *Pulaski v. Cal. Occupational Safety & Health Standards Bd.* (1999) 75 Cal.App.4th 1315, 1328.) The APA requires an agency proposing to adopt regulations to "assess" and "consider" the potential for adverse economic impacts, including impacts on California business. (Gov. Code, § 11346.3.) Here, the Council substantially failed to assess and consider the potential for adverse economic impacts on California business because it only considered the administrative costs of satisfying the Regulations' documentary requirements. (See N821-79 [Council's Economic and Fiscal Impact Statement and Cost Analysis (collectively, "Cost Analysis")].) The Council did not make a reasoned effort at assessing the consequences of the Regulations' substantive requirements, such as section 5003's mandate to reduce reliance on the Delta by implementing all locally cost-effective plans and programs to improve water use efficiency, recycle more water, and take other

actions. Section 5003's mandate has foreseeable consequences that the Council failed to consider or assess. Therefore, the Council substantially failed to comply with the APA's requirement to assess economic impacts and the Delta Plan Regulations should be declared invalid.

1. An Agency Must Assess the Economic Impacts of its Proposed Regulations

Under the APA, agencies have an obligation to assess the economic impacts of their proposed regulations. (*W. States, supra*, 57 Cal.4th at pp. 426-28.) In particular, Government Code section 11346.3 requires that a state agency proposing to adopt a regulation "shall assess the potential for adverse economic impact on California business enterprises and individuals . . . ." (Gov. Code, § 11346.3(a).) In assessing such a potential for adverse economic impact, agencies are required to base their action "on adequate information concerning the need for, and consequences of," the proposed action, and must "consider the proposal's impact on business, with consideration of industries affected[.]" (*Id.*, § 11346.3(a)(1) and (2).)

"A regulation 'may' be declared invalid if the agency makes an 'initial determination' that an action does not have a significant, statewide adverse economic impact directly affecting business, but that determination is in conflict with substantial evidence in the record." (*Cal. Assn. of Med. Products Suppliers v. Maxwell-Jolly, supra*, 199 Cal.App.4th at p. 304, quoting Gov. Code, §§ 11346.5(a)(8), 11350(b)(2).) And even if the agency's determination is not in "conflict" with substantial evidence in the record, the agency still has an obligation to "make a reasoned effort to initially assess the economic impact" of the regulation and meet an initial "evidentiary burden" to support its determination. (*W. States, supra*, 57 Cal.4th at p. 431.)

2. The Council Failed to Adequately Assess the Economic Impact Associated with the Regulations' Requirement to Reduce Reliance on Delta Water

The Cost Analysis fails to reasonably assess the economic costs and consequences of section 5003 on local agencies, industries, private businesses and individuals. The Cost Analysis admits that "Section 5003 requires that, under certain circumstances, any water supplier that would receive water from a proposed action to export water from, transfer water through, or use water in the Delta must demonstrate reduced reliance on the Delta." (N867.) Despite the obvious costs associated with reducing use of a critically important source of water and attempting to develop alternative water

sources, the Council did not estimate or assess the costs associated with achieving reduced reliance. (See N821-79.) Instead, the Council merely estimated the cost to *document* the expected outcome of projects to reduce reliance on the Delta. (N863.) As a result, the Council failed to reasonably assess the economic consequences of section 5003's reduced reliance mandate and failed to substantially comply with the APA. (Gov. Code, §§ 11346.3, 11346.5.)

Although the Cost Analysis acknowledges that private businesses and individuals "may incur costs to make [an] action consistent with the Delta Plan," it fails to assess what those costs might be and how they may affect particular industries and jobs. (N825.) The Cost Analysis also recognizes that the Regulations "may cause a State or local agency proposing a covered action to modify its existing plans, imposing costs in undertaking or modifying a covered action to comply with the Delta Plan policies" but it fails to assess the costs to comply with section 5003's requirement to reduce reliance on the Delta. (N838.) The Cost Analysis states that the Council envisions, as a result of the Regulations, that "[r]egions reliant on receiving some portion of their water from the Delta watershed will have reduced their reliance and improved regional self-reliance through increased conversation and diversification of their local and regional sources of supply." (N839.) Yet, the Cost Analysis fails to assess the costs associated with the "recycled water and desalination" projects or other projects anticipated to be necessary to meet section 5003's "reduced reliance" mandate. (*Ibid*.) These foreseeable, anticipated costs to those that depend on water from the Delta are markedly absent from the Council's Cost Analysis. (N850-51.)

The economic costs of water reductions are severe. In fact, the Cost Analysis itself acknowledges that "[i]n the past, significant business related costs have occurred in California during water supply shortage conditions." (N826.) In a February 2, 2012 comment letter, petitioners discussed the work of expert economists who concluded that in 2009, as a result of relatively dry hydrology and water supply restrictions imposed on the SWP and CVP, the San Joaquin Valley population lost as many as 7,434 jobs, more than $278 million in income, and more than $368 million in overall economic output. (See D1985.) Several court decisions also acknowledge and describe the economic impacts of reduced water supplies. (See *Consol. Delta Smelt Cases* (E.D. Cal. 2010) 717 F.Supp.2d 1021, 1052-57; *Consol. Salmonid Cases* (E.D. Cal. 2010) 713 F.Supp.2d 1116, 1148-1155.)

In addition, the Cost Analysis is legally insufficient to the extent it assumes the reductions in the quantity of water conveyed through the Delta would be offset by localized actions, because the Cost Analysis does not identify or analyze any costs associated with such actions to offset lost Delta supplies. The Council failed to analyze in any meaningful way how much replacement water would be needed to mitigate for reduced supply, potential alternative sources and the barriers to their development and implementation, how costly such alternative sources might be, and the potentially significant economic consequences of developing those supplies. This approach simply ignores that there is a cost associated with developing and securing alternative water supplies, in violation of Government Code section 11346.3. An agency cannot simply consider only the direct costs to *comply* with a regulation; instead, the agency must "make a reasoned estimate" of the regulation's economic *impact* on "affected parties." (*W. States*, *supra*, 57 Cal.4th at pp. 408-09.) The Council failed to substantially comply with the APA's requirements to assess the economic impacts of its Regulations and therefore, the Court should invalidate the Regulations.

V. THE DELTA PLAN PEIR'S CEQA DEFICIENCIES

A. CEQA Standard of Review

A court reviews the adequacy of an EIR by determining whether the lead agency prejudicially abused its discretion. (PRC, §§ 21168, 21168.5.) In determining this, the court will apply one of two potential standards of review to evaluate whether the agency: (1) failed to proceed in the manner required by law ("failure to proceed" standard) or (2) made a decision not supported by substantial record evidence ("substantial evidence" standard). (*Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.)

Which test applies depends on the nature of EIR's alleged defect. (*Vineyard*, *supra*, 40 Cal.4th at pp. 428, 435.) If the lead agency did not include or evaluate information *required* by CEQA to be in an EIR, the "failure to proceed" standard applies. (*Ibid.*; *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236.) Under this standard, the court affords no deference to the lead agency's determinations but determines de novo whether that agency "scrupulously enforce[d] all legislatively mandated CEQA requirements." (*Vineyard*, *supra*, 40 Cal.4th at p. 435.) The omission of required environmental information is presumed to be prejudicial when it prevents informed decision-making

and public participation. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1220.)

By contrast, the substantial evidence standard applies where required information or analysis is included in the EIR, but there is a factual dispute regarding whether it is legally sufficient. (*Vineyard, supra*, 40 Cal.4th at p. 435.) "Substantial evidence" is "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines, § 15384(a).) Evidence in support of an agency's decision only qualifies as "substantial" if it consists of "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (*Id.*, § 15384(b).) "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate . . . does not constitute substantial evidence." (*Id.*, § 15384(a).)

B. <u>The PEIR's Project Description Violates CEQA</u>

CEQA requires an accurate and complete project description – a clearly written statement of the project objectives and information regarding "the project's technical, economic, and environmental characteristics." (Guidelines, § 15124(c).) The project description is the analytical foundation for the entire EIR. (*Co. of Inyo v. City of L.A.* (1977) 71 Cal.App.3d 185, 192-93.) In this case, the PEIR provides extensive narrative purporting to describe the project and its objectives. (See, e.g., D6788-91; D6807-6913; D5902; D5978-79.) Though voluminous, this discussion, like most of the PEIR, offers little substance. The PEIR violates CEQA because it lacks sufficient meaningful and accurate information regarding the project and its objectives to allow evaluation of its environmental impacts. (*San Joaquin Raptor Rescue Ctr. v. Co. of Merced* (2007) 149 Cal.App.4th 645, 654.)

1. The CEQA Project Objectives Conflict with the Act and, Hence, Fail as a Matter of Law

An EIR "must include a clear statement of 'the objectives sought by the proposed project,' which will help the lead agency 'develop a reasonable range of alternatives to evaluate in the EIR and will aid the decisionmakers in preparing findings or a statement of overriding considerations, if necessary.'" (*San Joaquin Raptor, supra*, 149 Cal.App.4th at pp. 654-55.) Thus, the objectives are crucial to both proper consideration and analysis of the proposed action and to the formulation and

evaluation of project alternatives. (Guidelines, §§ 15126.4(a)(1), 15126.6(a).)

Here, the Council's project objectives are set forth in Section 1 of the Draft PEIR. (D6788-6791; see also D5902 [Recirculated PEIR]; D6733 [Executive Summary].) Although the Draft PEIR states that "[a]chieving the coequal goals is a primary and fundamental purpose of the Delta Plan," the Council has distorted the coequal goal of providing a more reliable water supply for California, both by unlawfully including WR P1 to achieve reduced reliance, and by assuming that implementation of the Delta Plan ultimately results in less water being exported from the Delta under the Plan than under the No Project Alternative. (D6788; D6734.) As discussed above, the Council formulated a Delta Plan, and consequently, project objectives in the Draft PEIR, that do not reflect the Legislature's specific direction as to what it means to promote a more reliable water supply for the state: (1) meeting the needs for reasonable and beneficial uses of water; (2) sustaining the economic vitality of the state; and (3) improving water quality to protect human health and the environment. (Wat. Code, § 85302(d); see I444.) These are the Act's key criteria identified for achieving the coequal goal of water supply reliability. And, as demonstrated in Sections II.B.-C., above, the Act contemplates that improving reliability of water supplies imported from the Delta by way of new conveyance included in the BDCP is included in the coequal goal of more reliable supplies for California. The Council ignores these criteria and instead asserts that the Delta Plan increases water supply reliability by requiring water users to "reduce reliance" on water conveyed through the Delta and to meet water supply needs "through improved regional water self-reliance," regardless of their ability to offset supply reductions through conservation or alternative sources. (D6733.) The Delta Plan thus would *reduce* water supply reliability as compared to present conditions, and the PEIR's project objectives (and comparison of alternatives) have been skewed toward this end. (See, e.g., D6788; D6733-34; D8249-59; see also D6569-86 [Recirculated PEIR].) Because the Council's project objectives conflict with the statutory provisions of the Act, those objectives likewise fail as a matter of law under CEQA.[19]

[19] As discussed in detail in Section IV.A.1., above, the term "reliability" in the context of the Act has history and meaning that cannot be oversimplified to suit the Council's "make do with less"

2. The PEIR Omits Project Components Fundamental to Informed Analysis – the Regulatory Policies of the Delta Plan

At its core, the adopted Delta Plan consists of thirteen policies through which the Council seeks to *regulate* water supply, water resources, and development patterns. (B446-47 [WR P1]; B450 [WR P2]; B451-52 [ER P1, P2, P3, P4]; B454 [ER P5]; B455-56 [DP P1, P2]; B461-64 [RR P1, P2, P3, P4].) Those policies help to define what constitutes a "covered action," and any state or local agency that proposes to carry out, approve, or fund a covered action must certify consistency with those policies. (D33-39; D5989-93; D6807-10; D8323-30.) Yet, the Draft PEIR's description of the basic elements of the proposed action—the "Policies and Recommendations of the Proposed Project"—is relegated to an appendix. (See, e.g., D6812 ["[t]he policies and recommendations included in the Proposed Project are presented in Appendix C]; D5978-79 [stating that Delta Plan "contains policies and recommendations" but providing no further substantive information]; see Guidelines, § 15124.) Neither the Draft PEIR's project description nor the Recirculated PEIR's revisions identify the Delta Plan regulatory policies. (D6807-6913; D5978-79.) The PEIR therefore is fundamentally defective as an informational document. (*Vineyard*, *supra*, 40 Cal.4th at p. 442 ["[i]nformation 'scattered here and there in EIR appendices' or a report 'buried in an appendix,' is not a substitute for 'a good faith reasoned analysis'"]; see Guidelines, § 15147.) "The decisionmakers and general public should not be forced to sift through obscure minutiae or appendices in order to ferret out" the true nature of the proposed project. (*San Joaquin Raptor*, *supra*, 149 Cal.App.4th at p. 659.)

---

preference. (See, e.g., K799-800.) Rather, water supply reliability is a complex concept involving increased and diversified water supplies to reduce the disparity between supply and demand, conservation and efficient use of water resources, and sufficient operational flexibility (such as taking more water during wet periods in order to buffer reduced supplies during dry ones) to respond to changing conditions and meet appropriate public trust, constitutional, and coequal goal requirements. (See Wat. Code, § 85302(d).) The Council has refused to grapple with the need to improve water supply reliability, and as a result, the PEIR is little more than a *pro forma* exercise that skirts important environmental issues and advocates for, rather than assesses the impacts of, the Delta Plan. (See Sections V.D.-E., below, discussing absence of analysis of Delta Plan impacts and mitigation measures.) The PEIR raises significant concerns of its improper use as an advocacy document to build momentum for policies that fail to reflect the coequal goals. CEQA requires objective analysis, not advocacy. (*Planning & Cons. League v. DWR* (2000) 83 Cal.App.4th 892, 918; see *Citizens for Ceres v. Super. Ct.* (2013) 217 Cal.App.4th 889, 917.)

More importantly, neither document's "analysis" of potential impacts makes any mention of the policies whatsoever. (See D167 [DWR confirming that impacts of policies were not analyzed].) The Council's fundamental failing is this – even assuming that an industrious reader did read both the Draft and the Recirculated PEIR project descriptions and looked up the policies in Appendix C, the Council violated CEQA *by failing to analyze the impacts of those policies* in the PEIR. For example, neither the Draft nor Recirculated PEIR discussion of "Water Resources" in Section 3—the resource *most* affected by these policies—contains *any* reference, discussion, or analysis of the policies, much less any *analysis* as to how those policies may or may not impact water resources. (See D6941 et seq. [Draft PEIR]; D6005 et seq. [Recirculated PEIR].) This is a prejudicial omission because the effect of the Council's interpretation that "reduced reliance" is required is to prohibit Delta water supplies resulting from a covered action from reaching homes, businesses, and agricultural operations if one or more water suppliers that will receive the water has not "adequately reduced reliance" by implementing all locally cost-effective measures to do so. (See Section IV.A., above.) Further, Policy DP P1 has significant land use, growth, and development impacts—impacts that will also affect water supply planning in the long term—in that the policy forbids "[n]ew residential, commercial, and industrial development" outside of "[a]reas that city or county general plans as of [the date of the Delta Plan's adoption] designate for residential, commercial, and industrial development in cities or their spheres of influence." (B455; see also D5989 [describing DP P1]; Cal. Code Regs., tit. 23, § 5010 [codifying Policy DP P1].) This flaw is not limited to water resources, but exists as to every resource in the PEIR. (See Section V.D., below.)

C. The PEIR Employs a Misleading and Uninformative Baseline Snapshot to Avoid Realistic Assessment of Project Impacts

The EIR "must delineate the environmental conditions prevailing absent the project, defining a 'baseline' against which predicted effects can be described and quantified." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447; Guidelines, § 15125(a), (c).) The EIR's description of the environmental setting must be sufficiently clear to allow informed comparison of pre-project and post-project conditions. (*Co. of Amador v. El Dorado Co. Water Agency* (1999) 76 Cal.App.4th 931, 955.) Accordingly, the Delta Plan and PEIR must

recognize and disclose existing environmental conditions. (Guidelines, § 15125(a), (c).) The Delta has undergone significant physical and biological modification over the past 150 years from activities associated with tidal marsh reclamation, dams and diversions, upstream land use changes, and channelization of rivers and tidal channels. (I447.) Indeed, this estuarine ecosystem is one of the most highly modified and controlled in the world. The historic Delta estuary cannot be fully restored in light of existing conditions within and outside of the Delta that include well-established water supply facilities and millions of acres of existing agricultural, urban, recreational, and other uses. (*Ibid*.) Furthermore, much of the water in the central and south Delta is foreign, meaning that it is either water of the Sacramento River watershed, which is conveyed through the central and south Delta, or water previously appropriated to storage in SWP and CVP facilities. (*Ibid*.) Even if the water reached the central and south Delta in a state of nature, it would have been present at times of excess, not when the water could have been put to beneficial use. (*Ibid*.) The PEIR must—yet fails to—present the environmental setting to fully and accurately reflect these existing conditions. (See, e.g., D6943-7016 [water resources]; D7055-7111 [biological resources].)

Indeed, the PEIR gives no description of how the baseline for the PEIR's analysis of Delta Plan impacts was determined. (See, e.g., D6792-6800 [Draft PEIR explanation of "Current Conditions" and approach to impact analysis]; D6914-40 [same]; see also D66-67 [Final EIR explanation of "Difference between the Proposed Project, Existing Conditions, and No Project Alternative].) The PEIR does not explain, for example, whether it assumes that the existing baseline conditions are drought conditions or normal conditions, whether conveyance through the Delta was assumed to be curtailed by operational permit constraints and/or various biological opinions or not, or what assumptions were made regarding capacity of existing storage and transport facilities. (E.g., D6792-6803; D6914-40; D6943-7016; D7055-7111.) The Council thus has disregarded important aspects of existing hydrology and water rights that the Legislature intended as fundamental considerations in preparation of the Delta Plan. (Wat. Code, §§ 85004, 85301.) This necessarily infects the PEIR's analysis of every issue, because impacts can be determined only by comparing project effects against baseline conditions.

Of particular concern is the PEIR's omission of information necessary to understand impacts

in relation to the Council's unauthorized but central focus on forcing "reduced reliance" upon water users as a stated primary "purpose" of the Delta Plan. Despite the fundamental importance of existing environmental conditions to the PEIR analysis, the document does not define the baseline against which the Plan's proposed reduced reliance policies will be measured. Specifically, the PEIR omits critical information regarding existing water use, infrastructure, and supplies, existing conservation plans and the status of their implementation, and other basic information necessary to describe the physical baseline conditions in which the Delta Plan would be implemented. (See, e.g., D6943-7016, D7055-7111.)[20] This has broad implications, particularly for those water users who have already reduced their reliance on water conveyed through the Delta through conservation measures and other water management activities. Many local and regional water agencies have focused extensively on, and invested heavily in, local water supply resources, urban and agricultural water use efficiency, local surface and groundwater storage projects, water recycling, voluntary water marketing and other conservation and management tools. (See, e.g., K2817; K11012-13.) These local efforts have mitigated the impact of droughts and regulatory water shortages, but they cannot—in and of themselves—resolve long-term problems in the Delta that must be addressed to improve statewide water supply reliability. (See, e.g., K2817.) As the Act emphasizes, California also must invest in well-managed conveyance facilities, storage, and ecosystem restoration as components of a comprehensive plan to meet the coequal goals. (See, e.g., Wat. Code, §§ 85003(b), 85020.) To formulate a viable Delta Plan, the Council was required to address core issues that define the existing environment. (Guidelines, § 15125(a), (c).) Without any substantiated basis, however, the PEIR assumes that "regional self-reliance" is feasible in every region that relies on water from the Delta

---

[20] The PEIR further fails to account for changing conditions in California's water supply, agriculture, and biological and other resources. (E.g., D6943-7016; D7055-7111; D7377-92.) The EIR should have described those changing conditions, identified the conditions upon which the PEIR relied for its baseline, and considered that range of circumstances as part of the impact analysis. (See *Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1570; *Neighbors, supra*, 57 Cal.4th at pp. 452-53.) The PEIR fails to investigate or disclose any information related to these conditions, instead relying "primarily" on "information taken directly or summarized from existing documents," many of which are decades old. (E.g., D6943.)

watershed.[21] The PEIR omits fundamental baseline information regarding existing water use, which is necessary in order to credibly evaluate potential gains through implementation of the Delta Plan and to determine whether the measures or alternatives needed to achieve those gains would be feasible.

D. The PEIR Fails to Disclose and Analyze All Potentially Significant Project Impacts

CEQA imposes several fundamental obligations on an agency analyzing a project's environmental impacts in an EIR. These requirements ensure the EIR "demonstrate[s] to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." (Guidelines, § 15003(d), citing *People ex rel. Dept. of Pub. Works v. Bosio* (1975) 47 Cal.App.3d 495.) It is also by fully analyzing a project's impacts that an agency complies with CEQA's informational disclosure mandates. (See generally *Vineyard, supra*, 40 Cal.4th at p. 432 [EIRs must "make a sincere[] and reasoned attempt to analyze" impacts].) Though perfection is not required, the failure to comply with any one of CEQA's basic requirements constitutes a prejudicial abuse of discretion, justifying an overturn of the agency's EIR and project approvals as a consequence of failing to proceed as required by law.[22] (E.g., *Stanislaus Natural Heritage Project v. Co. of Stanislaus* (1996) 48 Cal.App.4th 182, 205-06; *Bakersfield Citizens, supra*, 124 Cal.App.4th at pp. 1213, 1220-21.) As described below, the Council committed prejudicial error by failing to comply

---

[21] CEQA defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (Guidelines, § 15364.) As discussed in Section V.D.4., below, the Council's feasibility findings fail on every level because they are not supported by substantial evidence.

[22] Even if the substantial evidence test applied to the determinations identified below—which it does not—the PEIR would still fail because the Council provides no explanation supported by substantial evidence as to why it is appropriate to brush over impacts or to ignore impacts outside the Delta region. The Council does state that "the Delta is the focus of the Act, so the study … is focused on the Delta." (D7511.) However, the geographic limits of the Act under the *Water* Code has no bearing on the Council's CEQA obligation under the *Public Resources* Code to analyze impacts wherever they may arise. (See *Am. Canyon Community United for Responsible Growth v. City of Am. Canyon* (2006) 145 Cal.App.4th 1062, 1082 ["an agency must identify and attempt to mitigate the extraterritorial environmental effects of any project it intends to carry out"]; *City of Marina v. Bd. of Trustees* (2006) 39 Cal.4th 341, 359-60 [same]; *Co. of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 106 [CEQA's analysis requirements apply even outside lead agencies' legal jurisdictional boundaries].)

with CEQA's requirements in multiple ways. As a result, the Council's certification of the PEIR and approval of the Delta Plan must be overturned.

1. The Council Artificially and Impermissibly Truncated Its Analysis by Ignoring Foreseeable Project Impacts Outside the Delta Region

An EIR's analysis must capture the direct and reasonably foreseeable indirect environmental impacts of a project. (Guidelines, §§ 15064(d), 15358.) The lead agency must analyze those impacts wherever they occur, even if they are on the opposite side of the state. (*Co. Sanitation Dist. No. 2 v. Co. of Kern* (2005) 127 Cal.App.4th 1544, 1581, 1588 [county agency must consider emissions from trucks traveling between L.A., Ariz.].) To this end, CEQA broadly defines the area of analysis as "the area which will be affected by a proposed project." (PRC, § 21060.5.) "The purpose of CEQA would be undermined if . . . agencies went forward without an awareness of the effects a project will have on areas outside of the boundaries of the project area." (*Muzzy Ranch Co. v. Solano Co. Airport Land Use Com.* (2007) 41 Cal.4th 372, 387.)

(a) The Council Improperly Provided a Lesser Level of Analysis to Areas Outside the Delta that Use Delta Water

The Delta Plan confirms its implementation is intended to result in "a significant reduction in the amount of water used, or in the percentage of water used, from the Delta watershed" in the use of Delta water supplies. (B541; see also B447; B448.) The PEIR acknowledges that implementation of the Delta Plan will result in reduced exports from the Delta. (D6734.) The study area used throughout the PEIR to analyze the impacts of that reduction includes "three main areas: the Delta and Suisun Marsh, the Delta watershed, and the areas outside the Delta that use Delta water." (E.g., D6941 [re: water resources]; D7054 [biology]; D7376 [agriculture]; D7510 [air quality].) The Recirculated PEIR, too, "*uses the same assessment methods* and threshold of significance as the Draft PEIR to evaluate the potential significant impacts of the Revised Project for all resources areas." (D6001-02, emphasis added [confirming same "three main areas" were considered]; see, e.g., D6005 [water resources]; D6025 [biology]; D6123 [agriculture]; D6175 [air quality].) However, the PEIR admits that it "predominantly" looks at potential impacts in the Delta and Suisun Marsh and only considers impacts outside the Delta "to a lesser extent." (D7510; see, e.g., D6943 [describing water

resources within the Delta but providing merely "a general discussion" of water resources elsewhere].) No explanation is provided as to *why* it was appropriate for the PEIR to focus on the Delta and provide a "lesser" level of analysis for the remainder of the state.

This approach ignores that many of the Project's significant impacts will occur exactly where the Council prefers not to look, i.e., in areas outside the Delta. (See B544 [showing relative water use outside Delta]; see also, e.g., D297 [commenting on foreseeable impacts in Butte County]; D346-48 [same for San Joaquin Valley, including Merced, Fresno, Kern and King Counties]; D431 [Tuolumne County]; D545-55 [Sacramento, Placer, El Dorado and Yolo Counties].) Consistent with its admittedly "lesser" level of analysis, the PEIR provides only a cursory discussion of water-related issues outside the Delta (e.g., D6943) and almost no actual "analysis" (D6009; D7022). It is areas outside the Delta which will have to plan, fund, and implement the suite of water replacement projects the Council repeatedly acknowledges will be necessary to replace Delta-related water supplies. (E.g., D7022 [identifying wells, desalination, groundwater banking, increased reliance on surface waters, and other replacement projects].) The Plan is expressly premised on the assumption that replacement supplies of water can be obtained from groundwater basins and surface water sources. (D346; D5900; D6006 [Revised DEIR listing water supply projects that could result from Revised Project].) Such increased reliance on groundwater and surface water sources will exacerbate existing overdraft conditions in many basins throughout the state, will result in additional land subsidence as groundwater levels fall, and may result in impacts to riparian or other water-dependent resources or species that rely upon those surface water sources. (D346; D2007.) *None* of these potential environmental impacts are even identified, let alone analyzed, in the PEIR. (Cf. D346; D2007; D6012 [acknowledging overdraft status of basins that receive or use Delta water but providing no analysis of other direct and indirect impacts]; see also D6015; D7031.) Consistently, the PEIR provides no analysis of visual or aesthetic impacts outside the Delta, even though the Plan calls for reduced Delta water reliance and increased local water conservation efforts – actions with a high likelihood of adversely impacting aesthetic resources such as landscaping, greenery, and agriculture. (See sources, above.) Nor does the PEIR provide any discussion of special status species that may be affected by statewide construction and operation of projects designed to replace Delta water supplies – such as

desalination projects in sensitive coastal areas or projects that divert surface water during drought conditions. (See sources, above.)

Simply put, because the environmental effects of the Council's Plan are likely to be felt to an even greater extent in areas outside the Delta, the Council's analysis of those effects should not be undertaken by means of a "lesser" level of analysis, but in equal or even greater detail. The Council's arbitrary decision to provide a lesser level of analysis for environmental impacts in areas outside the Delta simply cannot be defended. It is a failure to proceed in the manner required by law.[23] (*Bakersfield Citizens*, *supra*, 124 Cal.App.4th at p. 1216 [area affected by project cannot be so narrowly defined that it eliminates a portion of affect area].)

(b) The Council Entirely Fails to Consider Impacts in Many Areas Outside the Delta

Moreover, the PEIR's plain language confirms that it studied only "areas outside the Delta *that use Delta water*." (D6005, emphasis added; e.g., D6941; D6943 [re: water resources]; D7054 [biology]; D7376-77 [agriculture]; D7510 [air quality].) CEQA, however, does not say that an impact analysis stops at service area lines or jurisdictional boundaries; instead, it says that impacts must be analyzed *wherever* they arise. (E.g., *Muzzy Ranch*, *supra*, 41 Cal.4th at p. 387.) The Council's approach necessarily fails to account for impacts in areas that do not use Delta water, but that will be

[23] The above examples are not exhaustive. Other examples the Council must review in a revised PEIR include (a) agricultural impacts from fallowing due to lack of water; (b) air quality/health risk impacts from fallowing; (c) greenhouse gas emissions from fallowing; (d) biological and greenhouse gas impacts from construction and operation of replacement water projects; (e) impacts to water quality due to increased reliance on local water sources/salt water intrusion in coastal areas; and (f) impacts to utilities and energy demand due to increased reliance on local water sources. (E.g., D232 [DWR comment that potential increase of electricity demand should be examined on the local level; new desalination plant may require new generation facility]; D233 ["[w]ater transfers and some types of water efficiency projects … increase energy use and, therefore, have GHG emissions associated with them, which … might be significant"]; D297 [Butte County comment noting increased demand on groundwater basin may impact local surface water, agriculture, ecosystem]; D346-48 [Westlands comment noting, among others, impacts related to fallowing]; D553 [Regional Water Authority comment that increased reliance on local supplies could cause overdraft of groundwater that draws contamination into potable wells and reduction of surface water supplies resulting in the termination of conjunctive use programs]; D2007-12 [noting impacts related to fallowing, reduced hydroelectric generation, and construction of replacement water supply projects, among others].)

impacted by the Project. (See D6942 [Figure 3-1 depicts large areas of the state which do not "use Delta water"]; B434 [same].)

Areas that share air basins with Delta water users will be impacted by dust, greenhouse gasses, and other emissions resulting from fallowed land and increased shipping distances. (D346 [response to comment acknowledging that "agricultural areas in the San Joaquin Valley could be fallowed or retired due to the lack of water supplies to replace reduced water supplied from the Delta"]; D348 [fallowing causes impacts such as additional dust and particulate emissions].) In addition, coastal areas will be impacted by the construction and operation of desalination plants that are needed to purify and convey replacement water to areas that currently use Delta water. (D346 ["[t]he analysis in this EIR assumes that other water supplies, including … ocean desalination … would be used to meet water demands"]; D5900; D6006.) The Council similarly fails to address the impacts of pipelines and/or conveyance facilities that will presumably be necessary to convey replacement groundwater or surface water to those areas currently relying on Delta water supply. Given that a major emphasis of the Council's Plan under the policy of "reduce[] reliance on Delta exports" (D5900) is to push all water users towards "reliance on local and regional water supplies" (D5979), those replacement water supplies may very well be sourced from areas that do not currently "use Delta water." (E.g., D5902 [Project objective: "regional water self-reliance"]; D5980 [policies are intended to "reduce reliance on the Delta"]; B541 [significantly reducing amount or percentage of Delta water usage is "fundamental" to the Delta Plan].) The omission of any discussion of impacts that may occur to areas outside of those that use Delta water is inexcusable considering that Delta water supplies were developed precisely "<u>because</u> local and regional water supplies were insufficient to meet then existing or projected uses." (D313, underline in original.)

Ultimately, by providing a lesser level of analysis for areas outside the Delta that use Delta water, and by *entirely* failing to consider impacts in areas that do not use Delta water, the Council commits the same prejudicial error condemned in *County Sanitation District* and *Muzzy Ranch*. Namely, the Council ignores impacts merely because they occur in areas geographically distant from the Delta. Because the PEIR did not address such impacts, it must be set aside.

2. The Council Impermissibly Ignored and Deferred the Analysis of Reasonably Foreseeable Environmental Impacts

(a) The PEIR Fails Under CEQA's General Requirements for Program Level Review

An agency is forbidden from deferring the analysis of reasonably foreseeable impacts until a later date. (E.g., *Cal. Clean Energy Com. v. City of Woodland* (2014) 225 Cal.App.4th 173, 200; *Vineyard, supra*, 40 Cal.4th 412, 429.) A *program*-level EIR may sometimes forego a *project*-level analysis of activities that are specific to later phases and will be analyzed as part of a subsequent CEQA process, but such "tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration." (*Vineyard, supra*, at p. 431; see also Guidelines, § 15168.) An agency's use of a program EIR is *not* a means to wholesale avoid analysis but, rather, an opportunity to drill down on program-wide impacts that might be overlooked or omitted during subsequent environmental review for localized projects. (Guidelines, § 15168(b) [PEIRs should provide a "*more exhaustive* consideration of effects and alternatives than would be practical for an EIR on an individual action"] [emphasis added]; *Vineyard, supra*, at p. 431 ["stating information will be provided in the future" does not comply with CEQA].) The failure to analyze impacts by impermissibly deferring analysis is reviewed under the failure to proceed standard. (E.g., *Vineyard, supra*, at pp. 444, 447.)

Here, the PEIR concludes that many impacts are significant and unavoidable, but improperly defers the analysis of those impacts—*even program-level impacts*—to future projects and other agencies. Indeed, the entire PEIR is replete with the Council's declaration that other agencies will conduct future CEQA review and will work out what the Plan's impacts are, where those impacts may be most severe, and what mitigation is required at some future date. (E.g., D7605 ["the implementation and enforcement of these [future actions] would be within the responsibility and jurisdiction of public agencies other than the Council"]; see also D7019 [water quality impacts analyzed at a later time]; D6013, D7025, D7031 [water supply impacts may be analyzed at a later time]; D6187, D7544 [construction impacts may be analyzed by other agencies at a later time];

D6187, D7533, D7538 [odors may be analyzed at a later time]; D6197, D7550 [health risks may be analyzed at a later time]; D6226, D7605 [cultural impacts may be analyzed at a later time]; D8145-46.) Accordingly, the PEIR fails to provide even a *qualitative, program*-level analysis of these issues and fails as a matter of law.

(b) Recent Precedent Confirms that the PEIR Should Be Set Aside

More specific guidance regarding the amount of detail required in a program EIR can be found in *Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314 and *In re Bay-Delta* (2008) 43 Cal.4th 1143. Both decisions upheld the adequacy of the challenged program EIRs, and both decisions make clear that the program EIRs in those cases were very different (and far more detailed) than the PEIR being challenged here.

Atherton involved a program EIR for the San Francisco-to-Central Valley portion of California's High Speed Rail Project.[24] (*Atherton*, *supra*, 228 Cal.App.4th at pp. 322, 342.) That EIR provided a program-level analysis of the project, but deferred the more detailed "project-level" analysis of the vertical impacts of a potential aerial viaduct until a later, second-tier document. (*Id*. at p. 342.) The need for aerial viaducts was not yet confirmed at the time of the program EIR, and such need could not be determined until a later project-level analysis. (*Ibid*.) Under those circumstances, the court found it appropriate to defer the "analysis of environmental impacts and mitigation measures for the vertical alignments at certain portions of the [rail route]." (*Id*. at p. 347.) In so holding, the *Atherton* court did not endorse an approach wherein a lead agency can defer *all* analysis, but instead confirmed that deferral is only appropriate "as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand." (*Id*. at p. 344, citing Guidelines, § 15152(c).) Further, such deferral is only appropriate "'when the impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases.'" (*Ibid*., quoting *In re Bay Delta*, *supra*, 43 Cal.4th at p. 1170.)

In turn, *In re Bay-Delta*, *supra*, involved a program EIR for the CALFED Program, a broad,

[24] The program EIR at issue was actually a revised EIR, prepared to satisfy a decision *striking down* the original program EIR as inadequate. (*Atherton*, *supra*, 228 Cal.App.4th at pp. 324-25.)

long-term program to manage water resources in the Bay-Delta. (43 Cal.4th at p. 1170.) Not unlike the PEIR prepared here, the CALFED EIR was intended to provide a first tier level of analysis, with later environmental documents addressing project-level impacts. (*Ibid*.) However, that is where the CALFED EIR and the PEIR at issue in this case diverge. The Supreme Court upheld the CALFED program EIR because that EIR (1) "include[d] tables estimating, for each program alternative, potential water acquisitions from willing sellers along various rivers in the Program area;" (2) "addresse[d] the significant impacts of taking water from the identified potential sources;" and (3) "then discussed [the impacts] in general terms for the five CALFED geographic regions." (*Id*. at p. 1171.) Further, the CALFED EIR "provided *region-by-region analysis* of the general impacts of water acquisitions." (*Id*. at p. 1173, emphasis added.) Because the EIR provided a careful, program-level review of potential program-wide impacts, the high court upheld it as adequate under CEQA. (*Ibid*.)

Here, and contrary to the rule enunciated in *Atherton*, the Council ignores potential water supply and other impacts resulting from reduced Delta deliveries, even though those <u>are</u> exactly the type of program-level impacts driven by implementation of the Delta Plan itself – and not solely the result of later project-specific activities. (D167 [DWR confirming that PEIR looks only at the "perception" of what the Delta Plan policies will do and not their actual impacts].) Further, agencies proposing subsequent projects will look only at their narrow and project-specific impacts to water supply and other resources, but will have no obligation to discuss regional or statewide impacts resulting from the Delta Plan as a whole.[25] (See, *Atherton*, *supra*, 228 Cal.App.4th at p. 346 [second tier document need only analyze those issues specific to the second tier decision]; *Cal. Clean Energy*, *supra*, 225 Cal.App.4th at p. 200.)

Further, even a brief review of the Supreme Court-approved CALFED EIR shows what the PEIR here lacks. (See J24849 et seq. [CALFED EIR].) The CALFED EIR included a general discussion of impacts by region (J24912-18), followed by an analysis of alternatives and the proposed

---

[25] Such an approach would also result in the impermissible piecemealing of Project impacts, in that each subsequent project may conclude that its individual impacts will be insignificant when—taken together—the Delta Plan's impacts would be significant. (See, e.g., PRC, § 21159.27; Guidelines, § 15003(h).)

project (J24919 et seq.). Further, the analysis included a region-by-region projection of the *general magnitude* of anticipated Delta water supply reductions, and charts comparing potential water losses during average, dry, and critically dry years. (J24959-62; D24964-65; D24970-72.) It included a discussion of the *general magnitude* of both existing and potential future storage capacity. (J24966-68; J24972-73.) It also included a similarly detailed analysis of each alternative. (See J24919-58 [analyzing alternatives].) Here, the PEIR contains *none* of this information nor any other similarly meaningful discussion of the magnitude of water supply reductions – instead offering up a two-sentence *conclusion* that Delta water supply impacts are less than significant. (D6009; D7022.) The Council's wholesale deferral of the analysis of impacts causes the PEIR to fail as a matter of law.

3. Even as to Impacts That Are Identified, the Council Failed to Analyze the Project's Impacts and Instead Provides Only Bare Conclusions

Under CEQA, a lead agency cannot provide significance conclusions without first identifying and rigorously analyzing potential impacts. (Guidelines, §§ 15126.2(a), 15358; *City of Maywood v. LAUSD* (2012) 208 Cal.App.4th 362, 393; *Bakersfield Citizens, supra,* 124 Cal.App.4th at p. 1220.) Though it may be infeasible at the program-level for an agency to disclose impacts with project-level specificity, the agency must nonetheless discuss the impact and estimate its overall *magnitude*. (See *In re Bay-Delta, supra,* 43 Cal.4th at p. 1171.) Further, an EIR's discussion of environmental impacts cannot be a black box, with the project description on one side and a conclusion on the other, but must document the "analytic route the agency traveled from evidence to action." (*Laurel Heights Improvement Assn. v. Regents of the U.C.* (1988) 47 Cal.3d 376, 404; see also Guidelines, § 15162.2; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111.) An agency's failure to analyze impacts by providing mere conclusions is not a factual dispute, but a prejudicial failure to proceed in the manner required by law. (E.g., *Protect Historic Amador, supra,* 116 Cal.App.4th at p. 1112.)

Here, the Council flatly asserts that impacts may occur and may (or may not) be significant, but fails to *analyze* or *describe* those impacts.[26] Accordingly, the Council has failed to document the

[26] Again, the examples given are not exhaustive. The Council provided the same impermissible and

analytic route it traveled from evidence to action, and the PEIR must be set aside.

(a) Impacts to Human Health (Sensitive Receptors) Are Not Analyzed

Section 9 of the PEIR (D6175 et seq.; D7510 et seq.) allegedly analyzes, for example, whether the Project—and the suite of water replacement projects it would necessitate—could result in exposure of "sensitive receptors" (i.e., human beings) to substantial pollutant concentrations in a manner that results in health impacts. (D7522.) With regard to the Project's operational emissions, the PEIR states quantification of Toxic Air Contaminant ("TAC") emissions was *not* done at the program level, and that impacts only would be "discussed qualitatively." (D7522.) The PEIR confirms that TAC emissions may result "in death or in serious illness" (D7514), thus a careful and thorough discussion (albeit qualitative) was vital. In contrast to this need, the *entire* "analysis" of the Project's operational impacts on the health of sensitive receptors states:

> Emissions associated with operations of projects would depend on several factors, such as the size and the of project, the number of employees and types of equipment, the increased traffic on the local and regional roadway network (including additional haul trucks and workers), the level of operations activities, and the locations of sensitive receptors. Emissions similar to those expected during construction, but at lower levels, would likely result from maintenance and operation of projects.

(D7528; see also D6180; D6185; D6188; D6192; D7533; D7538; D7542; D7545 [virtually identical language].)[27] Based on this "analysis," the PEIR concludes that health impacts to sensitive receptors would be significant. (D6180; D6185; D6188; D6193; D7529; D7534; D7538; D7542; D7546.)

---

conclusory treatment of impacts *throughout* its PEIR – defects which should be globally corrected in any revision. (E.g., D6028-30, D7116-18 [water supply projects triggered by the Project may result in changes to water flow and salinity, loss of habitat, and introduction of predators that would impact habitat for special-status species, including the delta smelt, but failing to *analyze* or *describe* the impact]; D6085-87, D7263-64 [same lack of analysis, conclusory "significant" finding for Delta flood risk impacts resulting from water quality improvement projects and flood risk reduction projects triggered by the Project]; D6177-79, D6182-83, D6186-87, D6189-90, D6193-95, D7523-27, D7530-32, D7535-37, D7539-41, D7543-44 [same for air quality impacts from construction and operation of projects relating to water supply, ecosystem restoration, Delta enhancement, water quality and flood risk reduction triggered by the Project].)

[27] Indeed, the PEIR is largely a copy-and-paste document wherein the same language is repeated with very minor modifications, and almost no effort was invested to really explain how the Project might cause impacts. (See D7538 [Apparently as a result of a copy-and-paste error, the sensitive receptors analysis conclusion actually refers to "the impacts of odors" – a topic addressed under an entirely separate threshold of significance].)

This cursory approach to a subject as important as human health fails to satisfy CEQA's requirement that impacts be *described* and that the analytic *route* between Project description and significance conclusion be laid out. Instead, the PEIR merely declares that the Project may cause things to be built and operated, and that the emissions of those things may be significant. Further, the PEIR acknowledges that health impacts caused by TACs "are dependent on the severity of the concentrations that sensitive receptors may be exposed to, the duration of exposure, and the relative toxicities of the individual pollutants." (D6180; D7528.) Yet, the PEIR fails to identify what concentrations are relevant, what durations are relevant (short-term versus lifetime exposure), or what the relative toxicities of the various pollutants caused by the Project actually are. The PEIR even fails to identify *what* health impacts it is referring to (asthma, cancer, lung development, respiratory illness?) or *what* sensitive receptors may be most susceptible (children, schools, playgrounds, the elderly, hospitals, outdoor athletes?). Because CEQA case precedent has long confirmed the importance of linking health impacts to the air quality and TAC emissions that cause them, the Council's failure to provide even a qualitative discussion of these issues fails as a matter of law. (E.g., *Bakersfield Citizens*, *supra*, 124 Cal.App.4th at pp. 1219-20.)

(b) Impacts to Water Supplies Are Not Analyzed

Section 3 of the PEIR (D6005 et seq.; D6941 et seq.) also allegedly analyzes impacts to "water supply availability to water users that use Delta water." (E.g., D7022.) The Delta Plan and the PEIR both confirm that the overall goal of the Plan is to cause "*significant reduction* in the amount of water used, or in the percentage of water used, from the Delta watershed." (B541, emphasis added; see also D5900; D5902; D5979; D6734.) The PEIR, however, repeatedly states that the Council is unaware of the location, timing, funding, or availability of projects that might bring forward water supplies to replace reduced Delta exports. (E.g., D6005-06 [type, location, size, variety of projects unknown]; D6800 [program-level analysis provided; detailed analysis to be done by other agencies later]; D7017 [number and location of projects unknown].) Consistent with the factors enunciated in the *In re Bay Delta* decision, *supra*, the PEIR should nonetheless have provided a region-by-region analysis of the locations most likely to be affected by reductions and a quantification of the general magnitude of water reductions. (43 Cal.4th at pp. 1171, 1173.) PEIR Section 3.4.3.1, entitled "Reliable Water

Supply," contains the Council's "analysis." (D7017 [introduction]; D7022 [addressing Delta water supply availability specifically].) *In total*, it states:

> The Proposed Project encourages a variety of actions to improve local and regional water reliability while reducing the use of Delta water, including actions to increase the use of recycled wastewater and stormwater, groundwater and surface water facilities, surface water and wellhead treatment facilities, water use efficiency and conservation actions, water transfers, and ocean desalination plants. Such water supply reliability projects would provide a benefit to water supply availability and to water users that use Delta water.

(D7022; see also D6009 [recirculated PEIR, same language]; D6015, D7031 [similarly truncated language addresses water supply under other topics]; D181 [DWR objects to the "fewer than 10 line" analysis].) In short, the PEIR provides no analytic route, indeed no analysis *at all*, regarding what impacts may result, what areas of the state may be hit hardest by reduced Delta deliveries, and what attendant impacts may result from those reduced deliveries. The then-Chair of the Delta Stewardship Council even acknowledged in an internal email discussing the Petitioners' comment letters that the PEIR was conclusory and failed to answer "simple question[s]" regarding Delta Water supply. (M1902.) The Chairman further acknowledged that such failure was yet "another example of the absolute need to establish background context and facts – not just to assume that they exist somewhere." (*Ibid*.) Despite those comments, the PEIR that was certified contains no public disclosure of how large of a decrease in water supply there may be—not even in general terms—and includes no analysis of the environmental effects of the reduction in water supply, where they will occur or what effects they will precipitate as public agencies attempt to make up for the loss. (See D177 [DWR confirms that PEIR does not analyze impacts of water replacement projects].) Further, the PEIR provides no explanation as to why the Council is so *uncertain* regarding Project impacts that it cannot even analyze them in a general sense, and yet is so *certain* that replacement water will be available that it can conclude no significant impact to water supplies will occur. (See also discussion, below, at Section V.D.4., addressing PEIR's contradictions and lack of substantial evidence.) Again, the PEIR fails to *analyze* impacts and, instead, provides a mere conclusion, in violation of CEQA.

4. The Council's "Analysis" and Conclusions Are Not Supported by Substantial Evidence

The analysis that an agency *does* undertake and the conclusions that it reaches must be

supported by substantial evidence. As noted above, substantial evidence must be "solid and credible" and consist of *facts* and reasonable extrapolations therefrom, not mere speculation or unsubstantiated opinion. (See Guidelines, § 15384(a), (b); *Neighbors, supra*, 57 Cal.4th at p. 471.) Here, in a variety of ways, the PEIR fails to support is conclusions with substantial evidence.

(a) Because of the PEIR's Legal Failures, the Existence or Non-Existence of Substantial Evidence Is Irrelevant

As explained above, the Council failed to proceed in the manner required by law by certifying a PEIR that: (1) has an improper Project description and therefore did not analyze the whole of the action; (2) arbitrarily reviews impacts outside the Delta in less detail; (3) improperly ignores all impacts occurring in areas that do not use Delta water; (4) provides bare conclusions rather than explanation and analysis; and (5) impermissibly defers the analysis of program-level impacts to a future date. These failings amount to total disregard for CEQA's informational disclosure requirements and the *factual* analysis and explanation necessary to meet CEQA's substantial evidence test. (Guidelines, § 15384.) Accordingly, as a matter of law, the PEIR cannot be supported by substantial evidence and, instead, must fail.

(b) Contradictory Evidence Is Not "Substantial Evidence"

Because substantial evidence must be fact-based, contradictory statements do not meet CEQA's evidentiary requirement. (*Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1042 fn.6 [no substantial evidence where record contained contradictory statements]; *Citizens' Com. to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1168 ["Evidence that rebuts, contradicts or diminishes the reliability or credibility of [the] evidence is properly considered."].) Here, the record shows the Council's conclusions are based on *contradictory assumptions*—not evidence—such that the PEIR fails.

(i) The Council's Conclusions Regarding Delta Water Supply Availability Are Directly Contradictory

The Council concludes that the Project would have a "less than significant" impact or even "no impact" to "change[s in] Delta water supply availability to water users that use Delta water" under CEQA. (E.g., C74 [Council's CEQA findings]; see also D6009; D6013; D6015; D6018; D7022;

D7024; D7028; D7030; D7031; D7035.) In fact, the PEIR goes so far as to conclude that the Delta Plan Project "would provide a *benefit* to water supply availability" and that "total water supply availability would remain the same *or increase* as compared to existing conditions." (D7022; D7025 [emphases added].) The record further states that the Delta Plan will achieve the Council's goal of "providing a more reliable water supply for California." (E.g., D68.) These conclusions are based on the Project "encourage[ing] a variety of actions to improve local and regional water reliability while reducing the use of Delta water, including actions to increase the use of recycled wastewater and stormwater, groundwater and surface water facilities, surface water and wellhead treatment facilities, water use efficiency and conservation actions, water transfers, and ocean desalination plants." (D6009; see also D7022; D7025; D7034.)

However, these conclusions stand in direct contrast to statements and evidence found elsewhere in the record. While the PEIR recites a "less than significant" impact conclusion regarding Delta Water supply availability, the Delta Plan itself maintains that the Project *will* "result in a significant reduction" in the percentage or amount of Delta water supplies (B541), and implementation of the Delta Plan will reduce Delta exports. (D6734.) Indeed, the CEQA findings confirm the Delta Plan "could substantially reduce water supply availability to water users." (E.g., C80.) Further, the Delta Plan encourages the State Water Resources Control Board to "modify" flow criteria, though the record also confirms that all of those "modifications" would result in a *lesser* volume of exports from the Delta. (D702; D8324-26 [policies include promoting stricter flow objectives and preventing any increase in capacity of any water system to store, divert, move, or export water from or through the Delta and recommending SWRCB cease issuing water rights permits in the Delta and Delta watershed]; B541; B447-48; Cal. Code Regs., tit. 23, § 5003 [also found at B446-48, forbidding water exports from or through Delta for those who have not adequately reduced reliance on the Delta]; see also *Friends of the Eel River v. Sonoma Co. Water Agency* (2003) 108 Cal.App.4th 859, 869 [EIR *improperly* and euphemistically called flow proposals mere "modifications," when in fact every proposal *decreased* water flows].) Even DWR—an agency which manages the State's water resources—repeatedly "disagreed" that water supply impacts would be less than significant. (D180.)

In contrast to the PEIR's conclusions that there is a wide array of replacement water sources that can be relied upon to make up Delta supply reductions, the PEIR also admits that "[t]he precise magnitude and extent of project-specific impacts on physical environment would depend on the type of action or project, its specific location, its total size, and a variety of project- and site-specific factors are undefined at the time of preparation of this [PEIR]." (D6005.) In fact, the PEIR emphatically states, in virtually every section, that the Council is unable to predict (and thus to analyze under CEQA) what water supplies are available and what projects could be built to make up the substantial reduction in water supply that will result from the Plan's implementation. (D6006; D7017.)

The PEIR is internally inconsistent and self-contradictory and thus unsupported by substantial evidence. Either the Delta Plan substantially reduces Delta water supplies, or it does not. Either there is a wide array of reasonably foreseeable projects to make up for Delta water losses (in which case the Council should have analyzed them under CEQA), or they are too speculative to foresee (in which case the Council's "less than significant" conclusion is unsupported).[28] The Council cannot with one breath insist that water replacement projects are *so certain* that there is no potentially significant impact to Delta water supply, and with the next breath insist that water replacement projects are *so speculative* that the Council had no obligation to analyze them. These contradictory and presumptive statements do not rise to the level of substantial evidence. (See *Vineyard*, *supra*, 40 Cal.4th at pp. 430-41 ["CEQA's informational disclosure purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project."].)[29]

---

[28] When an EIR improperly concludes a project-specific impact is less than significant, this also infects the cumulative impacts analysis, rendering it insufficient as well. (See *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 933.) Accordingly, for all impacts for which it calculates and analyzes Project-specific impacts insufficiently, its cumulative impact analysis for these impact areas is also insufficient.

[29] Although *Vineyard* grappled with a large-scale land use proposal, its holding illustrates fundamental CEQA principles and instructs agencies that "speculative sources [of water] and unrealistic allocations ('paper water') are insufficient bases for decisionmaking under CEQA." (40 Cal.4th at p. 432.) That logic applies with equal force where the Project involves the water supply serving two-thirds of the state and where there is not even a *contractual* basis for acquiring additional water, but where it is merely "anticipated" by the Council that water sources will manifest from unknown locations, using unidentified funding, and proceeding under an unforeseeable schedule. (See D7025.)

(ii) The Council's Conclusions Regarding Operations-Related Groundwater Basin Overdraft Are Contradictory

Likewise, the Council concludes that *operational* impacts to groundwater overdraft are less than significant.[30] (E.g., C4 *et seq.* [Council's CEQA findings]; D5912; D6009; D6012; D6015; D6017; D7021; D7027.) On the one hand, the Council acknowledges that the Project will encourage local groundwater pumping to replace lost Delta water supplies and that the Project will cause "the potential increase in groundwater extraction in areas outside of the Delta." (D7024.) On the other hand, the Council concludes, without any supporting evidence, that water suppliers can simply implement recharge projects to prevent groundwater basin drawdowns. (E.g., D7020.) The Council also claims that groundwater pumping "would occur in accordance with sustainable groundwater management plans and thus would not result in overdraft of local groundwater supplies." (D7024.)

The record directly contradicts this reasoning. First, the PEIR *admits* that some groundwater basins around the state are already overdrafted – a few critically so. (D6946; D6948.) The Delta Plan, too, depicts groundwater basins in parts of the state as suffering from critical overdraft. (B564; see also K11012; K11776-90.) The record shows that it is *those same areas* that receive the largest shares of Delta water supply. (Cf. B564 with B544.) Similarly, the record shows that the vast majority of

---

[30] Notably, the Council repeatedly concluded—as to dozens of impacts—that the uncertainty surrounding the Project's effects and the ability of agencies to reliably mitigate for those effects merited a conclusion that "significant and unavoidable impacts" may result. (D6030, D6058 [biological resources]; D6085-87, D095-97 [Delta flood risk]; D6177-79, D6196-97 [air quality]; D6451, D6464 [traffic]; D6486, D6508 [greenhouse gas emissions].) The Council departs from that otherwise consistent approach with respect to water supply. The Council provides no substantial evidence supporting why "uncertainties" merit a less than significant conclusion as to Delta and groundwater supplies, but a significance conclusion as to other resources. The Council makes only the conclusory assertion that there was an "inability to identify a reasonably plausible scenario in which a potential significant impact may occur." (D6013; D6018; D7021; e.g., D25; D27; D28; D30 [identical language].) The only "plausible" explanation for endorsing such contradictory approach appears to be the Council's concern whether its Plan meets the "coequal goals" of the Act, one of which is to promote—*not significantly impact*—the reliability of the State's water supply. (See Section IV.A., above.) Ultimately, CEQA requires objective analysis, not advocacy. (*Planning & Conservation League v. DWR* (2000) 83 Cal.App.4th 892, 918.) "The agency's unbiased evaluation of the environmental impacts of the [project] is the bedrock on which the rest of the CEQA process is based." (*Citizens for Ceres v. Super. Ct.* (2013) 217 Cal.App.4th 889, 917.) The Council's contradictory approach should be rejected, both because it is not supported by substantial evidence and because it fails to meet CEQA's requirement of objectivity.

water demand in those areas is *already* being met from local supplies, and that the bulk of those local supplies comes from groundwater. (B544; D6946 [groundwater provides up to 80% of water supply in some areas, Central Valley basins are the most heavily pumped in the nation].) Further, the PEIR Appendix D "evidence" cited by the Council in support of its statement that basins can be managed sustainably is nothing more than a summary of well-drilling ordinances and regulations that *might* apply to groundwater basins. (See D8717-19 [summarizing *laws* that might apply to some groundwater basins but providing no *facts* or discussion of what basins have such plans or *how* those plans would prevent overdraft impacts].) Even the State Board took issue with the Council's conclusion that groundwater supply impacts would be less than significant and urged the Council to "include . . . evaluation of these issues" and to "propose mitigation" for those impacts. (D259.)

What the record shows, then, is that the very reason Delta water supply reliability is so critical is because some regions are *already* heavily relying on groundwater and other local sources to meet demand, and those local supplies are insufficient. (D313 [Delta water supplies were developed precisely because local supplies are inadequate].) The Council ignores these facts and concludes that suppliers can pump those basins at even greater rates while somehow acquiring water from other unidentified and future sources in sufficient amounts to both replace existing Delta supplies and to artificially recharge the overdrafted basins to prevent impacts.[31] This is an illogical and even ironic assumption, given that the Delta water that *might* serve as a source of potential basin recharge is the very same supply the Council proposes to reduce. (Cf. B564 with B544.) Mere assumptions and

---

[31] The ability to identify and develop replacement local water supplies is no simple undertaking. The Council impliedly acknowledges this in that its PEIR fails to identify even a single specific local replacement source, and instead provides an apparent "brainstorm" list of potential options. (See D7017.) Yet, not one of these options was found sufficiently foreseeable by the Council to merit analysis under CEQA. Second, local water suppliers have already undertaken many efficiency and management techniques to reduce water demand. (E.g., D331 [farmers already "maximizing irrigation efficiency"]; D7014 [southern California already recycles more than 35% of its wastewater]; B561 [other examples].) The Delta Plan itself confirms that—despite California's growing population—"total water consumption has not climbed in recent years." (B442; see also D6983-86; D6991 [PEIR identifies local efforts to manage local supplies, increase efficiency].) Ultimately, however, California's growing population and thriving economy continue to require substantial and reliable sources of water – a major source of which (Delta supplies) the Council proposes to reduce without identification of replacement sources.

contradictory logic do not rise to the level of a "reasonable assumption supported by fact." Thus, no substantial evidence supports the Council's conclusion that operational groundwater impacts will be less than significant.[32]

(c) The Council's Conclusions Regarding Construction-Related Groundwater Basin Overdraft Are Contradictory

The Council commits the same error with regard to construction-related groundwater impacts. The PEIR and the Council's findings admit that the construction of future projects will likely result in groundwater drawdowns and dewatering that results in the significant "deplet[ion of] groundwater supplies." (C62-63 [findings]; D6021-22.) The Council imposes a mitigation measure (MM 3-2) to reduce those depletion impacts by requiring that that replacement water be "trucked in" or that the affected wells be deepened. (D6021-22; D7033 [PEIR]; C112-13 [mitigation reporting plan].)

The Council's conclusion that deepening wells reduce and "mitigate" impacts to the depletion of groundwater supplies is, again, contradictory and unsupported by substantial evidence. As set forth above, many groundwater basins are already in a state of overdraft. The *impact* caused by construction activities, as identified by the Council, is that the groundwater levels will be depleted. (C62-63; D6021-22.) The Council does not—and cannot—provide any explanation showing how *deepening* wells and allowing for *increased* pumping of groundwater supplies actually reduces or avoids the impacts to those supplies. To the contrary, dewatering basins through construction activity and then exacerbating the situation by deepening wells to encourage additional pumping will worsen the impact – not mitigate for it. Further, and even if the Council's mitigation measure were supported by substantial evidence, the Council failed to comply with its separate and independent obligation to discuss the impacts of the mitigation measure. (See Guidelines, § 15126.4(a)(1)(D), citing *Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986 [impacts of mitigation measures must be discussed].)

---

[32] Indeed, the impacts that will directly result from increased groundwater drawdowns and overdraft are significant and impact the analysis in nearly every other section of the PEIR. Specifically, groundwater overdraft could cause subsidence resulting in permanent loss of groundwater storage capacity and damage to canals, roads, foundations and other infrastructure; contamination of currently potable wells by drawing in PCE, TCE, perchlorate and saltwater; and impacts to geology and soils from saltwater migration. (B562-63; D346; D553; D2007.)

E. Many of the PEIR's "Mitigation Measures" Are Unenforceable or Otherwise Legally Inadequate

"Mitigation" is an action that lessens or avoids a project's environmental impacts by avoiding, minimizing, rectifying, reducing, and/or compensating for an impact.[33] (PRC, § 21002; Guidelines, §§ 15370, 15401(a).) Under CEQA, all EIRs must identify and describe mitigation measures that have the potential to minimize or eliminate a project's significant environmental impacts. (PRC, §§ 21002.1(a), 21100(b)(3); Guidelines, § 15126.4.) Indeed, the very purpose of an EIR under CEQA is the identification of a project's significant environmental impacts *and the way in which those impacts can be mitigated*. (PRC, § 21002.1; *Citizens of Goleta Valley v. Bd. of Supers.* (1990) 52 Cal.3d 553, 564.) Accordingly, CEQA requires agencies to *adopt* mitigation measures "*whenever* it is feasible to do so." (PRC, §§ 21002, 21002.1(b), 21081(a); Guidelines, §§ 15002(a)(3), 15021(a)(2), 15091(a)(1), 15126.4(a)(1), emphasis added.) Regardless of which types of mitigation are ultimately selected, those measures must be specific and enforceable. (Guidelines, § 15126.4(a)(1) and (2); *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281.) Without adequate identification, analysis, and adoption of and enforceable feasible mitigation measures, an EIR fails to satisfy CEQA's key requirements. (See PRC, §§ 21002, 21002.1(a), 21100(b)(3), 21150.)

1. The PEIR Improperly Defers Formulation of Necessary Mitigation Measures Until After Project Approval

CEQA requires mitigation measures to be identified, described, and analyzed *prior* to project approval. (PRC, §§ 21002.1(a), 21100(b)(3); Guidelines, § 15126.4(a)(1); *Preserve Wild Santee*, *supra*, 210 Cal.App.4th at p. 280.) It is generally improper to defer formulation of mitigation measures until some future time. (Guidelines, § 15126.4(a)(1)(B).) Such deferral is only appropriate if the mitigation measures specify detailed performance standards that are known to be available *and* the EIR demonstrates that the measure will reduce or eliminate the identified significant impact(s). (*Ibid.*; *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906.) Deferral is

---

[33] Mitigation is discussed in Sections ES and 3 through 22 of the Draft PEIR, Sections ES and 3 through 22 of the Recirculated PEIR, and the MMRP. (D6731-87; D6941-8187; D5899-5972; D6005-6536; C106-38.)

impermissible if mitigation is described only in general terms or with general goals *without commitment to specific performance standards*. (*POET, LLC v. State Air Res. Bd.* (2013) 218 Cal.App.4th 681, 740; *Gray v. Co. of Madera* (2008) 167 Cal.App.4th 1099, 1119.) It is *improper* deferral to simply require a study or report be prepared and compliance with whatever recommendations are made in that report. (*Comms. for a Better Envt. v. City of Richmond* (2010) 184 Cal.App.4th 70, 92 ["*CBE*"].)[34]

The PEIR in this case is replete with examples of improperly deferred mitigation. For example, Delta Flood Risk Mitigation Measure ("MM") 5-2 requires, *post*-project approval, preparation of a drainage or hydrology and hydraulics study that "assess[es] the need and provide[s] a basis for the design of drainage-related mitigations," plus the provision of onsite stormwater storage based on the drainage or hydrologic study. (D5922; D6097.) Delta Flood Risk MM5-2 is the *only* mitigation measure identified for the impact "Create or Contribute Runoff Water Which Would Exceed the Capacity of . . . Stormwater Drainage Systems," an impact identified as *significant* without mitigation. (*Ibid*.; D6068-69; D6076; D6081-82; D6086-87; D6092-93; D6097.) The PEIR claims that the future preparation of this study will reduce this significant impact for covered actions to less than significant.[35] This is identical to the situation repeatedly disapproved in cases including *CBE* and *San Joaquin Raptor*. The mitigation "does no more than require a report be prepared and followed" with no standards. (*Endangered Habitats League v. Co. of Orange* (2005) 131 Cal.App.4th 777, 794.)

---

[34] This concept is illustrated by *CBE*, *supra*, in which a court found an EIR requiring the formulation and submission of a plan for achieving the "generalized goal of no net increase in greenhouse gas emissions" improperly deferred mitigation for significant adverse impacts to global warming. (184 Cal.App.4th at pp. 91-93.) The EIR's inclusion of a handful of mitigation measures to be considered for the plan was insufficient because the measures were "nonexclusive, undefined, untested and of unknown efficacy." (*Id*. at p. 93.) The development of mitigation measures is not meant to occur outside of project approval, but is meant to be "an open process that also involves other interested agencies and the public." (*Ibid*.) Similarly, in *San Joaquin Raptor*, *supra*, 149 Cal.App.4th at p. 669, an EIR required a management plan to be prepared by a qualified biologist to "maintain the integrity . . . of the vernal pool habitat." The court found the EIR improperly deferred mitigation because the measure merely included a "generalized goal" without commitment to specific criteria or standard of performance. (*Id*. at p. 670.)

[35] The PEIR requires no mitigation for this impact for non-covered actions, and therefore those impacts remain significant. (D6097 [EIR]; C64 [Findings].)

There is no evidence supporting a conclusion that a future study with unknown contents will reduce these impacts, and it simply cannot be known what will be contained in the report, much less whether it will be sufficient to reduce the significant impacts to less than significant.

Odor MM9-2 for "Construction and Operation of Projects Could Create Objectionable Odors Affecting a Substantial Number of People" has an identical flaw. MM9-2 is the only mitigation measure for this impact – an impact that is identified as otherwise being *significant*. (D6179; D6184; D6187; D6191; D6195; D6200.) However, MM9-2 states only that "Applicants should develop and implement a project-specific Odor Management Plan;" it contains no mandatory language or performance standards. (D5934; D6200.) Many other mitigation measures in the PEIR also suffer from this same defect, i.e., they impermissibly defer mitigation by requiring preparation of a report, study, plan or evaluation without specifying any performance standard. (See, e.g., D5951 [Hazards MM14-5, 14-6, claiming "[p]repare and implement a fire management plan," specifying no performance standards, will reduce significant hazards impacts to less than significant]; D6313; D6328; D6345; C0130; D5919 [Delta Flood Risk MM5-1, "[p]repare a drainage or hydrology and hydraulic study . . . . Design subsequent mitigation measures in accordance with the final study"]; D6068; D6075; D6080; D6086; D6091; D6095-97; D5943-44 [Geology MM11-9, "require geotechnical evaluation prior to construction to identify measures to mitigate"]; D6243; D6251; D6257; D6264; D6270; D6276; C127; D5960 [Transportation MM19-1, "[d]evelop and implement a traffic control plan"]; D6439; D6446; D6452; D6456-57; D6462; D6464-67; C133-34; D5969-70 [Greenhouse Gas Emissions MM21-2, MM21-3, MM21-4, "[p]repare a … study"]; D6489; D6493; D6497; D6500; D6504; D6508-10; C138.) These are legally insufficient. (*Endangered Habitats*, *supra*, 131 Cal.App.4th at p. 793.)

2. The PEIR's Mitigation Measures Are Uncertain and Unenforceable

All mitigation measures must be specific, effective, and "fully enforceable" through binding commitments. (Guidelines, § 15126.4(a)(1) and (2); PRC, § 21081.6(b); *Preserve Wild Santee*, *supra*, 210 Cal.App.4th at p. 281.) The purpose of this is "to ensure that feasible mitigation measures will actually be implemented . . . , not merely adopted then neglected or discarded." (*Fed'n of Hillside & Canyon Assns. v. City of L.A.* (2000) 83 Cal.App.4th 1252, 1261.) Measures that are vague, untested,

remote, or speculative are legally insufficient. (*CBE*, *supra*, 184 Cal.App.4th at p. 93; *Kings Co. Farm Bur. v. City of Hanford* (1990) 221 Cal.App.3d 693, 727-28.)[36]

A number of the PEIR's mitigation measures are uncertain, unenforceable, and speculative. First, several measures contain qualifying language that makes it uncertain whether the measures will be implemented at all, much less be effective at substantially reducing impacts. For example, Visual MM8-1 says "[c]onsider developing aesthetically well-designed visitor centers, vantage areas, or observation decks at appropriate facilities." (C119; D5932; D6170.) A measure that need merely be "consider[ed]" is not enforceable; there is no actual requirement that anything be done, and no standard for such consideration. Moreover, determining whether something is "aesthetically well designed" is subjective and impossible to enforce. MM8-1 essentially requires nothing. Similarly, to mitigate construction-related impacts to groundwater supplies, Water Supply MM 3-2 merely requires a survey made of all wells near the site, monitoring, and sheet piles. (D6021-22.) If sheet piles are not effective, water must be trucked in or wells dug deeper. (*Ibid*.) As in *Kings County*, there is no analysis whether water is available to be trucked in or the environmental impacts of that, and digging wells deeper will further deplete groundwater supplies, not mitigate such depletion.

The PEIR's other mitigation measures are riddled with similar deficiencies. Biology MM4-2 requires special-status species to be relocated "[w]hen appropriate." (D5917; D6060.) There is no explanation regarding when relocation would be "appropriate" or how this should be determined. Biology MM4-1, MM 4-2, and MM4-3 require certain design elements to be incorporated "to the maximum extent practicable," but there are no standards for determining whether something is "practicable." (D5913-17; D6058-60.) Agriculture & Forestry MM7-1, MM7-2, and MM7-3 states certain actions should be undertaken "to the greatest extent feasible," but has no standards for determining feasibility. (D5929-30; D6145-47.) Many other measures in the PEIR are similar inadequate. (E.g., D5928; D6119 [land us MM6-2, identifying "potential mitigation actions" that

---

[36] *Kings County*, *supra*, at p. 728, provides an example of insufficient mitigation regarding groundwater: its measure requiring the purchase of replacement water contained no analysis as to whether such water was actually available, making its efficacy speculative and the measure legally inadequate.

"could" be implemented]; D5933-34; D6198 [air quality MM9-1 identifies mitigation to be done "when possible" and "where feasible"]; D5926-27; D6119 [MM6-1 re: "sufficient points of visual and physical access"]; D6516-17 [significant cumulative impacts to biological resources, stating measures similar to MM4-4 and MM4-5 *should* be considered]; D6517 [same re: MMs 5-1 – 5-5]; C125-27 [same re: MM11-3, MM11-5 – M11-7]; see generally D6513-36.)

F. The PEIR's Cumulative Impacts Analysis Is Improperly Circumscribed

In addition to discussing project-specific impacts, an EIR must disclose and analyze the project's cumulative impact(s). (Guidelines, § 15130.) A "cumulative impact" is the incremental effect of a project when added to the impacts of other past, present, and reasonably foreseeable probable future projects. (PRC, § 21083(b)(2); Guidelines, §§ 15065(a)(3), 15355(b); *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1228.) The relevant issue to be addressed in the EIR's cumulative impact analysis is "whether the additional impact associated with the project should be considered significant in light of the serious nature of existing problems." (*City of Long Beach v. LAUSD* (2009) 176 Cal.App.4th 889, 905, emphasis omitted.) A proper determination and analysis of cumulative impacts is vital because separate analysis and approval of several projects with related environmental impacts could lead to devastating environmental harm. (*Whitman v. Bd. of Supers.* (1979) 88 Cal.App.3d 397, 408.)

To be adequate, an EIR's discussion of significant cumulative impacts must be based either on (1) a list of past, present, and probable future projects producing related types of impacts, including projects outside the lead agency's control, or (2) a summary of projections from adopted planning documents. (Guidelines, § 15130(b).) The discussion of cumulative impacts must reflect both their severity and their likelihood of occurrence. (*Ibid.*) Moreover, an EIR must "identify facts and analysis that support any conclusions that a project's contribution to the impacts would be less than cumulatively considerable." (Guidelines, § 15130(a)(3).)

1. The PEIR's Cumulative Impacts "Analysis" Violates CEQA Because It Is Overly General and Focuses Improperly on Alleged Project Benefits

An EIR's analysis of cumulative impacts need not be as exhaustive as for project-specific impacts. (Guidelines, § 15130(b).) However, whenever data is available or can be reasonably

produced through further study and such analysis is necessary to understanding the project's cumulative effects, it must be identified and analyzed. (*Kings Co., supra*, 221 Cal.App.3d at p. 729.)

Here, the PEIR contains a "list" of several related actions, programs and projects, including biological opinions on the long-term operations of the CVP and the SWP relating to delta smelt and other listed fish species. (D8166-87.) However, what cumulative impacts analysis is performed in the PEIR is solely qualitative and so general that it is impossible for the decision-makers or the public to understand the magnitude of the cumulative impacts that may occur with implementation of the Project and the other past, present, and future actions set forth in the Draft PEIR Table 22-1. (D6513; D6535; D8166-87.) There is no discussion regarding whether quantification is possible. Even if quantification were impossible, CEQA then requires the cumulative impacts analysis to focus on mitigation. (*East Bay Mun. Util. Dist. v. Dept. of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1113, 1130 ["*East Bay MUD*"].) The PEIR does not do so. Instead, the discussion for almost all of the cumulative impact areas merely notes that mitigation measures "should" be considered for them and does not analyze how the measures will ameliorate impacts. (D6514 [Water Resources, "Mitigation measures similar to Mitigation Measure 3-1 should be considered . . . ."]; D6515-16 [MMs 4-1 – 4-5]; see D6514-36 [all impact areas].) This violates CEQA. (*East Bay MUD, supra*, 43 Cal.App.4th at p. 1130; *City of Marina v. Bd. of Trustees* (2006) 39 Cal.4th 341, 367.)

In addition, for certain impacts, the PEIR improperly focuses solely on asserted environmental *benefits* and does not consider its significant negative environmental impacts. (D6515 [re: cumulative water resources impacts "[b]ecause the Revised Project . . . has the potential for beneficial effects, it would have a less than significant cumulative impact" on water supply, ecosystem restoration, water quality, etc.]; D6517 [Project could cause "long-term and permanent disruption of local development patterns," likely to be beneficial therefore less than significant].) These "analyses" misapply CEQA's requirements. No matter how beneficial an action is intended to be, "it cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review . . . . There may be environmental costs to an environmentally beneficial action, which must be considered and assessed." (*Cal. Farm Bur. v. Cal. Wildlife Conserv. Bd.* (2006) 143 Cal.App.4th 173, 196.)

2. The PEIR's Cumulative Impacts Analysis Violates CEQA Because It Fails to Include Other Relevant Actions

Guidelines section 15355 defines cumulative impacts as impacts resulting from the proposed action in combination with other actions causing similar types of impacts. Accordingly, in assessing a project's cumulative impacts, the lead agency must focus its evaluation upon other actions that have similar sorts of *impacts* on a particular resources, not merely on closely related types of *projects*. (Guidelines, § 15130(b); *City of Long Beach v. LAUSD* (2009) 176 Cal.App.4th 889, 907.)

Here, the Project reduces surface water availability and includes regulatory policies that limit the amount of water available to be conveyed through the Delta. (E.g., B541; B447-48; D8324-26; Cal. Code Regs., tit. 23, § 5003 [also found at B446-48]; see above, Sections V.B.2., V.D.4.b.(i).) However, past, present, and foreseeable future policies and programs are already causing severe water shortages and have closely related types of environmental impacts as the Project in terms of their effects on agricultural resources, groundwater supply, water quality, subsidence and soils, air quality, biological resources, and others due to resulting in inadequate water supplies, lack of high quality water for blending, overreliance on groundwater. (E.g., K11012; K11776-90 [significant impacts on agriculture, employment due to combine drought and Delta pumping restrictions; overpumping of groundwater already leading to water quality concerns; increase in fallowing]; *Westlands Water Dist. v. United States* (E.D. Cal. 1994) 1994 U.S.Dist.LEXIS 6260, *7-8 [increased land fallowing has attendant increases in fugitive dust emissions]; *Westlands Water Dist. v. United States* (E.D. Cal. 1994) 1994 U.S.Dist.LEXIS 6276, *52 [lack of water for farmland could result in soil erosion, depletion of quality soil]; Sharratt et al., Loss of Soils & PM10 from Ag'l Fields Associated with High Winds (2006) 32 Earth Surf. Process, Landforms, 621-630 [fallowing increased soil erosion]; Pimental, *Soil Erosion: A Food & Envtl. Threat* (2006) 8 Envt., Development, & Sustainability 119-37 [unplanted cropland exposes soil to erosion].) The PEIR fails to analyze these effects, does not recognize their significant effects, and fails to require feasible options for mitigating the Project's contribution to these significant cumulative effects. This violates CEQA. (Guidelines, § 15130(b)(5).)

3. The Geographic Area for the PEIR's Cumulative Impacts Analysis Is Improperly Circumscribed

An EIR must contextualize *where* cumulative environmental impacts will be felt for the project under consideration because the environmental significance of an action varies in relation to its setting. (Guidelines, §§ 15064(b), 15130(b)(2); *LAUSD v. City of L.A.* (1997) 58 Cal.App.4th 1019, 1026.) Accordingly, it is important for lead agencies to define the geographic scope of the area affected by a particular type of cumulative impact and provide a reasonable explanation for the defined geographic limitation. (See Guidelines, § 15130(b)(3); *City of Long Beach v. LAUSD* (2009) 176 Cal.App.4th 889, 907-08.) This is particularly imperative for specialized impacts with geographic boundaries different than those of other impacts. (*Long Beach*, *supra*, at p. 907.) For example, a watershed's geographical boundaries, with its particular set of related projects, would be far different than its traffic impacts or the air-related impacts of related projects in a particular air basin. (See *ibid.*) Thus, an EIR should define—and utilize—different geographic boundaries for specialized impact areas, such as its hydrological, air quality, and transportation cumulative impacts analyses. This geographic context must not be defined so narrowly that it eliminates a portion of the affected environmental setting. (*Ibid.*)

Bakersfield Citizens, *supra*, holds that it is inadequate for an EIR to fail to identify the criteria for determining the geographic area of its project's impacts. (124 Cal.App.4th at p. 1216.) Here, by ignoring all areas outside the Delta that do not rely on Delta water and giving short shrift to the areas outside the Delta that use Delta water, the PEIR fails to identify appropriate geographical boundaries for environmental impacts with potentially significant effects. (See Section V.D.1.(b); *Kings Co.*, *supra*, 221 Cal.App.3d at p. 721 [air quality analysis inadequate for improperly circumscribing geographic area of analysis].) The PEIR improperly minimizes the Project's impacts, in violation of CEQA.

G. <u>The PEIR's Alternatives Analysis Violates CEQA</u>

One of the purposes of an EIR is to identify a project's significant effects on the environment and alternatives that lessen or avoid those effects. (PRC, §§ 21002, 21002.1(a), 21061; Guidelines, §§ 15002(a)(3), 15126.6(a).) In this case, the Council asserts that "[e]ach resource section of the EIR

(Sections 3 through 21) includes a detailed comparison of the project alternatives as compared to the Proposed Project for that resource," and that Section 25 of the Draft PEIR "summarizes those comparisons." (D6737.) The PEIR violates CEQA because it assumes, without a factual basis, that the Council's preferred alternative will be successful (see, e.g., D6732) and lacks any objective evaluation of that preferred alternative in relation to other potential courses. Instead, the Council's evaluation of alternatives sets up a straw-man comparison between its preferred alternative and other options consisting of unworkable combinations of actions [e.g., "increase exports and decrease conservation"] virtually guaranteed to undermine the coequal goals as well as the interests of large numbers of stakeholders, making each alternative undesirable and infeasible. (See, e.g., D6872-75.) Throughout the document, the PEIR claims that the Council's preferred alternative will result in greater environmental benefits and fewer, less severe environmental harms than any of the alternatives identified. (See, e.g., D7033-41; D7139-51; D7430-44; D8250-59.) As is discussed in detail above throughout Section V., however, the Council failed to provide any analytical basis for its comparisons of environmental "tradeoffs." (See, e.g., D52; D76-80; D8250-59.)[37] Consequently, the PEIR's "range of alternatives," as well as its comparison of their relative merits, is illusory.

H. <u>The Council's Responses to Comments Are Dismissive and Legally Inadequate, and Fail to Address the Fundamental Defects in the PEIR</u>

The lead agency must evaluate comments on the draft EIR and provide a good faith response in the final EIR that addresses, in detail, significant environmental issues raised. (PRC, § 21091(d); Guidelines, §§ 15088(a), (c), 15132(d), 15204(a).) Here, many comments on the Draft PEIR and the Recirculated PEIR, particularly comments provided by the state and federal contractors and other public water agencies, raised significant environmental issues. (See, e.g., D294-2036; D3368-4349.)

---

[37] An EIR is required to consider the "No Project" alternative, which must include "a factually based forecast of the environmental impacts of preserving the status quo" so the environmental advantages and disadvantages can be understood. (*Planning & Cons. League, supra*, 83 Cal.App.4th at pp. 917-18.) Here, in each resource area, the PEIR failed to analyze the existing conservation, water quality, and other statutes that are in place and what projects are likely to occur under these existing statutes. (See, e.g., D67; D6873; D6876-88; D7033; D7139; D7430; D8250-59.) This lack of basic information regarding the "No Project" alternative violates CEQA. (*Planning & Cons. League, supra*, at p. 911.)

The Council summarily dismissed this information, rather than providing the reasoned responses CEQA requires.

For example, in response to comments pointing out the PEIR's fundamental flaw in merely assuming, without analysis, that nearly every impact is significant and unavoidable, the responses to comments claimed that the programmatic nature of the EIR excused the Council from analyzing environmental issues because local agencies will comply with CEQA for their individual actions later. (D67-74; D334-35.) Likewise, in response to public comments that the PEIR improperly failed to use applicable thresholds of significance, Master Response 2 merely claimed that the programmatic nature of the EIR made the use of specific quantitative thresholds speculative. (D67-74; see also D314; D338.) In this way, the Council's responses to comments repeatedly attempt to rely on the programmatic nature of the document to excuse the PEIR from providing *any* analysis of important environmental issues. (See, e.g., D67-285.) The programmatic nature of the document does not provide the insulation from its CEQA duties that the Council apparently believes it does, nor does it excuse the Council from identifying substantial evidence in support of its conclusions. (*Atherton*, *supra*, 228 Cal.App.4th at p. 344; see Sections V.D.2.(a) and (b), above.)

Many, if not most, of the public's comments were simply glossed over, with dozens of responses limited to "comment noted" or "n/a," or with reference to a generalized "master response," without any further discussion. (D97-5745.) While master responses sometimes may be used to efficiently respond to environmental concerns that were raised in multiple comments, the Council's broad-brush summary approach is dismissive and superficial, and ignores a number of important, specific issues that demand a good faith, reasoned response under CEQA. (D51-95; see also D97-5745.) As just one example, in response to detailed substantive comments from public water agencies relating to cumulative impacts, the responses to comments, with no additional discussion or analysis, merely advise reading Master Response 2. (D2002-03.) Master Response 2 does not address any of the issues raised by the public water agencies relating to cumulative impacts. (D67-74.)

In addition to the Master Responses' legal insufficiency, the PEIR's few specific responses to comments also fail to comply with CEQA. (See, e.g., D338; D3680.) For example, Comment RLO033-31 points out that much of the "science" upon which the PEIR is based is inadequate and

unsubstantiated. (D3680.) The PEIR's reliance on such information is improper, as erroneous and incorrect "information" does not qualify as substantial evidence – which requires *facts*. (See *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1367 ["[b]y using scientifically outdated information . . . , we conclude the EIR was not a reasoned and good faith effort to inform decisionmakers and the public about the increase in [toxic air contaminant] emissions that will occur as a consequence of the Airport expansion"].) Rather than addressing the insufficient nature of the data upon which the PEIR relies, Response to Comment RLO033-31 claims it is merely a comment on the project, not a comment on the EIR, and therefore declines to provide any response. (D3680; see also D338 (RTC LO 175-9 [same defect]).) The responses to comments fail because the Council's conclusions in the PEIR must be supported by substantial evidence, and outdated science does not qualify as such.

As another example, one of the member agencies of Petitioner State Water Contractors commented that the Council does not have the authority to impose regulatory requirements on local agencies as the Council asserts in its proposed Delta Plan regulatory policies, including WR P1. (D312-13.) The response dismissed this comment with the statement that "[t]his is a comment on the project, not on the EIR." (*Ibid.* [RTC LO169-4].) This response does not comport with CEQA. Whether the lead agency has the power to carry out an aspect of a project or mitigation measure is a relevant concern under CEQA. (See, e.g., Guidelines, §§ 15040, 15041; *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1014-15.) This CEQA violation is repeated in various responses to comments. (See, e.g., D342-45 (RTC LO175-12 [for comment that project objectives are inadequate, response erroneously states that this is a comment on the project, not the EIR]); D614 (RTC LO195-13 [comment that Draft Delta Plan has changed the definition of "project," a term of art under CEQA, for the Delta Plan; response merely states that this is a comment on the project]).)

Similarly, a comment on the Recirculated PEIR noted that, for some environmental issues (including visual resources and geology), areas outside the Delta were not analyzed. (D2005 [Comment LO232-48].) The response merely asserts that the comment is incorrect and cites pages RDEIR 8-14 (visual resources) [D6164] and RDEIR 11-4 (geology) [D6238]. (D2005.) RDEIR page 8-14 relates to construction-related impacts, however, and has only four sentences discussing the

visual impacts of these. (*Ibid.*) These sentences make reference to "the river" and other visual resources in the Delta and Delta watershed. (*Ibid.*) The entirety of the analysis of areas outside the Delta is that "facilities may be located in the Delta, Delta watershed, and areas outside the Delta that use Delta water." (*Ibid.*) This statement is supported by no facts or actual analysis of those impacts. and therefore does not in any way address the environmental issues raised. Likewise, RDEIR page 11-4 refers to "Delta peat soil" and appears to concern only geologic, construction-related impacts in the Delta area, not the large areas outside the Delta that would be significantly impacted. (D6238.)

Ultimately, these and the other failures identified in other comment letters on the PEIR, show that the Council failed to provide the good faith, reasoned responses to comments CEQA requires.

VI. CONCLUSION

For the foregoing reasons, the Court should find the Delta Plan. Delta Plan Regulations, and PEIR violate provisions of the Act, APA, and CEQA, and grant the relief requested in the Water Contractor Petitioners' petitions for writs of mandate complaints for declaratory and injunctive relief.

Dated: October 15, 2014 By:

Daniel J. O'Hanlon
Attorneys for Petitioners Plaintiffs SAN LUIS & DELTA-MENDOTA WATER AUTHORITY and WESTLANDS WATER DISTRICT

Dated: October 15, 2014 By:

Andrea A. Matarazzo
Attorneys for Petitioner Plaintiff WESTLANDS WATER DISTRICT

Dated: October 15, 2014 By:

Gregory K. Wilkinson
Charity Schiller
Attorneys for Petitioners Plaintiffs STATE WATER CONTRACTORS; ANTELOPE VALLEY-EAST KERN WATER AGENCY; ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7 and SAN BERNARDINO MUNICIPAL WATER DISTRICT

visual impacts of these. (*Ibid.*) These sentences make reference to "the river" and other visual resources in the Delta and Delta watershed. (*Ibid.*) The entirety of the analysis of areas outside the Delta is that "facilities may be located in the Delta, Delta watershed, and areas outside the Delta that use Delta water." (*Ibid.*) This statement is supported by no facts or actual analysis of those impacts, and therefore does not in any way address the environmental issues raised. Likewise, RDEIR page 11-4 refers to "Delta peat soil" and appears to concern only geologic, construction-related impacts in the Delta area, not the large areas outside the Delta that would be significantly impacted. (D6238.)

Ultimately, these and the other failures identified in other comment letters on the PEIR, show that the Council failed to provide the good faith, reasoned responses to comments CEQA requires.

VI. CONCLUSION

For the foregoing reasons, the Court should find the Delta Plan, Delta Plan Regulations, and PEIR violate provisions of the Act, APA, and CEQA, and grant the relief requested in the Water Contractor Petitioners' petitions for writs of mandate/complaints for declaratory and injunctive relief.

Dated: October 15, 2014

By: _____
Daniel J. O'Hanlon
Attorneys for Petitioners/Plaintiffs SAN LUIS & DELTA-MENDOTA WATER AUTHORITY and WESTLANDS WATER DISTRICT

Dated: October 15, 2014

By: _____
Andrea A. Matarazzo
Attorneys for Petitioner/Plaintiff WESTLANDS WATER DISTRICT

Dated: October 15, 2014

By: _____
Gregory K. Wilkinson
Charity Schiller
Attorneys for Petitioners/Plaintiffs STATE WATER CONTRACTORS; ANTELOPE VALLEY-EAST KERN WATER AGENCY; ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7 and SAN BERNARDINO MUNICIPAL WATER DISTRICT

Dated: October 15, 2014

By: _____
Stanly Yamamoto
for: Anthony T. Fulcher
Attorneys for Petitioner/Plaintiff SANTA CLARA VALLEY WATER DISTRICT

Dated: October 15, 2014

By: _____
Marcia L. Scully
Robert C. Horton
Attorneys for Petitioner/Plaintiff THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Dated: October 15, 2014

By: _____
William J. Brunick
for: Leland McElhaney
Attorneys for Petitioner/Plaintiff MOJAVE WATER AGENCY

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 400 Capitol Mall, 27th Floor, Sacramento, CA 95814.

On October 15, 2014, I served true copies of the following document(s) described as **STATE AND FEDERAL CONTRACTOR PETITIONERS' JOINT OPENING BRIEF** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address twhitman@kmtg.com to the persons at the e-mail addresses listed in the Service List. The document(s) were transmitted at or before 5:00 p.m. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 15, 2014, at Sacramento, California.

Terri Whitman

SERVICE LIST BY EMAIL
Coordination Proceeding Special Title (Rule 1550(b)) Delta Stewardship Council Cases
Judicial Council Coordination Proceeding No. 4758

E. ROBERT WRIGHT FRIENDS OF THE RIVER 1418 20th Street, Suite 100 Sacramento, CA 95811 Telephone: (916) 442-3155 Facsimile: (916) 442-3396 Email: bwright@friendsoftheriver.org	Attorneys for Petitioner FRIENDS OF THE RIVER
MICHAEL B. JACKSON MICHAEL B. JACKSON, ATTORNEY AT LAW 429 West Main Street, Suite D P.O. Box 207 Quincy, CA 95971 Telephone: (530) 283-1007 Facsimile: (530) 283-4999 Email: mjatty@sbcglobal.net	Attorneys for C-WIN, CSPA, AQUALLIANCE, and RESTORE THE DELTA
ADAM KEATS CHELSEA H. TU CENTER FOR BIOLOGICAL DIVERSITY 351 California Street, Suite 600 San Francisco, CA 94104 Telephone: (415) 436-9682 Facsimile: (415) 436-9683 Email: akeats@biologicaldiversity.org ctu@biologicaldiversity.org	Attorneys for CENTER FOR BIOLOGICAL DIVERSITY
THOMAS H. KEELING FREEMAN FIRM 1818 Grand Canal Blvd., Suite 4 Stockton, CA 95207 Telephone: (209) 474-1818 Facsimile: (209) 474-1245 Email: tkeeling@freemanfirm.com	Attorneys for Petitioners CENTRAL DELTA WATER AGENCY, SOUTH DELTA WATER AGENCY, LAFAYETTE RANCH, INC. and CINDY CHARLES
DANTE JOHN NOMELLINI DANTE JOHN NOMELLINI, JR. DANIEL A. MCDANIEL NOMELLINI, GRILLI & MCDANIEL 235 East Weber Avenue Stockton, CA 95202 Telephone: (209) 465-5883 Facsimile: (209) 465-3956 Email: ngmplcs@pacbell.net dantejr@pacbell.net damplc@pacbell.net	Attorneys for Petitioners CENTRAL DELTA WATER AGENCY, SOUTH DELTA WATER AGENCY, LAFAYETTE RANCH, INC. and CINDY CHARLES

JOHN H. HERRICK LAW OFFICE OF JOHN H. HERRICK 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Telephone: (209) 956-0150 Facsimile: (209) 956-0154 Email: jherrlaw@aol.com	Attorney for Petitioners CENTRAL DELTA WATER AGENCY, SOUTH DELTA WATER AGENCY, LAFAYETTE RANCH, INC. and CINDY CHARLES
S. DEAN RUIZ HARRIS, PERISHO & RUIZ 3439 Brookside Road, Suite 210 Stockton, CA 95219 Telephone: (209) 957-4254 Facsimile: (209) 957-5338 Email: dean@hpllp.com	Attorney for Petitioners CENTRAL DELTA WATER AGENCY, SOUTH DELTA WATER AGENCY, LAFAYETTE RANCH, INC. and CINDY CHARLES
OSHA R. MESERVE PATRICK M. SOLURI A LAW CORPORATION 1010 F Street, Suite 100 Sacramento, CA 95814 Telephone: (916) 455-7300 Facsimile: (916) 244-7300 Email: osha@semlawyers.com patrick@semlawyers.com	Attorneys for Petitioners LOCAL AGENCIES OF THE NORTH DELTA
STEVEN A. HERUM HERUM CRABTREE SUNTAG 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 Telephone: (209) 472-7700 Email: sherum@herumcrabtree.com	Attorney for Petitioner CITY OF STOCKTON
STEPHEN C. VOLKER DANIEL P. GARRETT-STEINMAN MARCUS BENJAMIN EICHENBERG LAUREN E. PAPPONE LAW OFFICES OF STEPHEN C. VOLKER 436 14th Street, Suite 1300 Oakland, CA 94612 Telephone: (510) 496-0600 Facsimile: (510) 496-1366 Email: svolker@volkerlaw.com dgarrett@volkerlaw.com mbeichenberg@volkerlaw.com lpappone@volkerlaw.com	Attorneys for Petitioners NORTH COAST RIVERS ALLIANCE, PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION, AND THE WINNEMEM WINTU TRIBE

ANDREA A. MATARAZZO JEFFREY K. DORSO PIONEER LAW GROUP, LLP 1122 S Street Sacramento, CA 95811 Telephone: (916) 287-9500 Facsimile: (916) 287-9515 Email: andrea@pioneerlawgroup.net Email: Jeffrey@pioneerlawgroup.net	Attorneys for Petitioner/Plaintiff WESTLANDS WATER DISTRICT
MICHAEL A. BRODSKY LAW OFFICES OF MICHAEL A. BRODSKY 201 Esplanade, Upper Suite Capitola, CA 95010 Telephone: (831) 469-3514 Facsimile: (831) 471-9705 Email: Michael@brodskylaw.net	Attorneys for Petitioners/Plaintiffs SAVE THE CALIFORNIA DELTA ALLIANCE
GREGORY K. WILKINSON CHARITY SCHILLER BEST BEST & KRIEGER LLP 3390 University Avenue, 5th Floor P.O. Box 1028 Riverside, CA 92502 Telephone: (951) 686-1450 Facsimile: (951) 686-3083 Email: Gregory.Wilkinson@bbklaw.com Charity.Schiller@bbklaw.com Melissa.Cushman@bbklaw.com	Attorneys for Petitioners STATE WATER CONTRACTORS, ANTELOPE VALLEY-EAST KERN WATER AGENCY, ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7, SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
STEFANIE D. MORRIS General Counsel State Water Contractors 1121 L Street, Suite 1050 Sacramento, CA 95814 Telephone: (916) 447-7357 Email: Smorris@swc.org	Attorney for Petitioner STATE WATER CONTRACTORS
STANLEY YAMAMOTO ANTHONY T. FULCHER SANTA CLARA VALLEY WATER DISTRICT 5750 Almaden Expressway San Jose, CA 95118-3686 Telephone: (408) 265-2600 Facsimile: (408) 265-2600 Email: syamamoto@valleywater.org afulcher@valleywater.org	Attorneys for Petitioner SANTA CLARA VALLEY WATER DISTRICT

MARCIA L. SCULLY ADAM C. KEAR LINUS S. MASOUREDIS ROBERT C. HORTON THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA 700 North Alameda Street Los Angeles, CA 90012-2944 Telephone: (213) 217-6336 Facsimile: (213) 217-6890 Email: mscully@mwdh2o.com akear@mwdh2o.com lmasouredis@mwdh2o.com rhorton@mwdh2o.com	Attorney for Petitioner THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
WILLIAM J. BRUNICK LELAND MCELHANEY BRUNICK, MCELHANEY & KENNEDY 1839 Commercenter West San Bernardino, CA 92408-3303 Telephone: (909) 889-8301 Facsimile: (909) 388-1889 Email: bbrunick@bmblawoffice.com lmcelhaney@bmblawoffice.com	Attorneys for Petitioner MOJAVE WATER AGENCY

[Exempt From Filing Fee Government Code § 6103]

DANIEL J. O'HANLON, State Bar No. 122380
REBECCA R. AKROYD, State Bar No. 267305
ELIZABETH L. LEEPER, State Bar No. 280451
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation
400 Capitol Mall, 27th Floor
Sacramento, California 95814
Telephone: (916) 321-4500
Facsimile: (916) 321-4555

Attorneys for Petitioners/Plaintiffs
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY and WESTLANDS WATER DISTRICT

ANDREA A. MATARAZZO, State Bar No. 179198
JEFFREY K. DORSO, State Bar No. 219379
PIONEER LAW GROUP, LLP
1122 S Street
Sacramento, CA 95811
Telephone: (916) 287-9500
Facsimile: (916) 287-9515

Attorneys for Petitioner/Plaintiff
WESTLANDS WATER DISTRICT

[Additional Counsel on Next Two Pages]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

Coordination Proceeding Special Title (Rule 3.550) DELTA STEWARDSHIP COUNCIL CASES	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4758 **STATE AND FEDERAL CONTRACTOR PETITIONERS' REQUEST FOR JUDICIAL NOTICE** The Hon. Michael P. Kenny, Dept. 31 Action Filed: May 24, 2013

ADDITIONAL COUNSEL

HAROLD CRAIG MANSON, State Bar No. 102298
General Counsel
PHILIP A. WILLIAMS, State Bar No. 296683
Deputy General Counsel
WESTLANDS WATER DISTRICT
c/o Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814
Telephone: (916) 321-4500
Facsimile: (916) 321-4555

Attorneys for Petitioner/Plaintiff
WESTLANDS WATER DISTRICT

JON D. RUBIN, State Bar No. 196944
General Counsel
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
c/o Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814
Telephone: (916) 321-4500
Facsimile: (916) 321-4555

Attorneys for Petitioner/Plaintiff
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

GREGORY K. WILKINSON, State Bar No. 054809
CHARITY SCHILLER, State Bar No. 234291
BEST BEST & KRIEGER LLP
3390 University Avenue, 5th Floor
P.O. Box 1028
Riverside, CA 92502
Telephone: (951) 686-1450
Facsimile: (951) 686-3083

Attorneys for Petitioners/Plaintiffs
STATE WATER CONTRACTORS; ANTELOPE VALLEY-EAST KERN WATER AGENCY; ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7; and SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

STEFANIE D. MORRIS, State Bar No. 239787
General Counsel
STATE WATER CONTRACTORS
1121 L Street, Suite 1050
Sacramento, CA 95814
Telephone: (916) 447-7357
Facsimile: (916) 447-2734

Attorney for Petitioner/Plaintiff
STATE WATER CONTRACTORS

STANLY YAMAMOTO, State Bar No. 092381
District Counsel
ANTHONY T. FULCHER, State Bar No. 192690
Senior Assistant District Counsel
SANTA CLARA VALLEY WATER DISTRICT
5750 Almaden Expressway
San Jose, CA 95118-3686
Telephone: (408) 265-2600
Facsimile: (408) 445-1435

Attorneys for Petitioner/Plaintiff
SANTA CLARA VALLEY WATER DISTRICT

MARCIA L. SCULLY, State Bar No. 080648
General Counsel
ADAM C. KEAR, State Bar No. 207584
Chief Deputy General Counsel
LINUS S. MASOUREDIS, State Bar No. 077322
Chief Deputy General Counsel
ROBERT C. HORTON, State Bar No. 235187
Sr. Deputy General Counsel
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
700 North Alameda Street
Los Angeles, CA 90012-2944
Mailing address: P.O. Box 54153
Los Angeles, CA 90054-0153
Telephone: (213) 217-6336
Facsimile: (213) 217-6890

Attorneys for Petitioner/Plaintiff
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

WILLIAM J. BRUNICK, State Bar No. 046289
LELAND MCELHANEY, State Bar No. 039257
BRUNICK, MCELHANEY & KENNEDY
1839 Commercenter West
San Bernardino, CA 92408-3303
Telephone: (909) 889-8301
Facsimile: (909) 388-1889

Attorneys for Petitioner/Plaintiff
MOJAVE WATER AGENCY

I. NOTICE OF REQUEST FOR JUDICIAL NOTICE

Petitioners San Luis & Delta-Mendota Water Authority; Westlands Water District; State Water Contractors; Antelope Valley-East Kern Water Agency; Alameda County Flood Control and Water Conservation District, Zone 7; San Bernardino Valley Municipal Water District; Santa Clara Valley Water District; Metropolitan Water District of Southern California; and Mojave Water Agency (collectively "Water Contractor Petitioners") respectfully request, pursuant to Evidence Code sections 452 and 453, and in accordance with California Rules of Court, Rule 3.1306(c), the Court take judicial notice of six documents that may assist the Court in deciding this case. The documents are further described in the supporting Declaration of Elizabeth L. Leeper and copies are attached thereto as Exhibits 1 through 6. The documents are:

1. Exhibit 1 – Preprint Senate Bill No. 1, proposed by Senator Simitian and prepared on or about August 4, 2009.

2. Exhibit 2 – Amended Senate Bill No. 12, amended by the Senate on or about February 26, 2009.

3. Exhibit 3 – Proposed Bill Text Senate Bill No. 12, Proposed Conference Report No. 1, prepared on or about September 9, 2009.

4. Exhibit 4 – Senate Bill No. X7-1 as introduced by Senator Steinberg on or about October 28, 2009.

5. Exhibit 5 – Senate Bill No. X7-1 as chaptered and filed with the Secretary of State on or about November 12, 2009.

6. Exhibit 6 – Record of Proceedings of the September 3, 2009 Legislative Conference Committee Hearing on Senate Bills 12, 229, and 458 and Assembly Bills 39 and 49.

II. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE

The Court may judicially notice Exhibits 1 through 5 pursuant to Evidence Code section 452, which provides that judicial notice may be taken of the "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." Exhibits 1 through 5 are documents specified in Evidence Code section 452, as they reflect "official acts" of the

legislative department of the state of California. (Evid. Code, § 452(c); *City of Scotts Valley v. County of Santa Cruz* (2011) 201 Cal.App.4th 1, 34 fn. 26.) Exhibits 1 through 5, as well as Exhibit 6, are also judicially noticeable under Evidence Code section 452(h), as "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

In this case, the Court is called upon to interpret the scope of the Delta Stewardship Council's ("Council") regulatory authority under the Sacramento-San Joaquin Delta Reform Act of 2009, Water Code section 85000 *et seq*. (the "Act" or "Delta Reform Act"). The Water Contractor Petitioners believe that to resolve the issue of the Council's authority, the Court need look no further than the plain language of the Act and the context of the overall statutory scheme. Exhibits 1-6 provide evidence that reinforces the plain language of the Act. In addition, if the Court finds this language ambiguous, then it may resort to sources such as legislative history to help determine legislative intent. (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 29 ["*Kaufman*"].) For these reasons, it is appropriate for the Court to take judicial notice of portions of the Delta Reform Act's legislative history, which include versions of Senate Bill No. 1 and Senate Bill No. 12 (predecessor bills to Senate Bill No. x7-1), and versions of Senate Bill No. x7-1 (the bill that was ultimately adopted and chaptered as the Delta Reform Act). The legislative history also includes legislative committee hearings regarding the predecessor bill, Senate Bill No. 12.

Water Contractor Petitioners request judicial notice of Exhibits 1 through 5, which are versions of Senate Bill Nos. 1, 12, and X7-1. Both the Third District Court of Appeal and the California Supreme Court have recognized versions of bills as documents that constitute cognizable legislative history. (See *Kaufman, supra*, 133 Cal.App.4th at p. 31; *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062, fn. 5.) In addition, the Third District has recognized predecessor bills as cognizable legislative history. (See *Kaufman, supra*, 133 Cal.App.4th at p. 36, citing *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1199.)

In addition, the Water Contractor Petitioners request judicial notice of Exhibit 6, which is the record of proceedings for a legislative conference committee hearing on the predecessor bill, Senate Bill No. 12. Both the Third District Court of Appeal and the California Supreme Court have

recognized the transcripts of such committee hearings as cognizable legislative history. (*Kaufman*, *supra*, 133 Cal.App.4th at p. 36, citing *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 376; *Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 519, fn. 5.)

Exhibits 1 through 6 are relevant. Each document sheds light on the understanding of the Legislature as to the authority granted to the Council and the meaning of the Delta Reform Act. Exhibits 1 through 5 reflect the Legislature's intent to limit and restrict the scope of the Council's authority and Exhibit 6 shows the intent to distinguish between legislative statements of policy versus legislative mandates. Thus, Exhibits 1 through 6 are relevant to resolving the merits of this case and should be judicially noticed.

In sum, for all of the foregoing reasons, the Water Contractor Petitioners respectfully request that this Court take judicial notice of Exhibits 1 through 6.

Dated: October 15, 2014

By:

Daniel J. O'Hanlon
Attorneys for Petitioners Plaintiffs
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY and WESTLANDS WATER DISTRICT

Dated: October 15, 2014

By:

for: Andrea A. Matarazzo
Attorneys for Petitioner Plaintiff
WESTLANDS WATER DISTRICT

Dated: October 15, 2014

By:

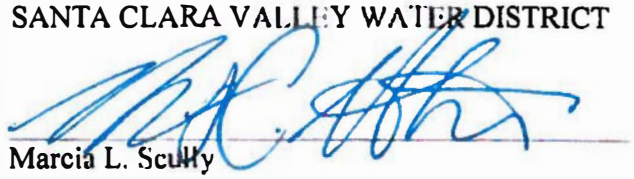
Gregory K. Wilkinson
Charity Schiller
Attorneys for Petitioners Plaintiffs
STATE WATER CONTRACTORS: ANTELOPE VALLEY-EAST KERN WATER AGENCY; ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7 and SAN BERNARDINO MUNICIPAL WATER DISTRICT

Dated: October 15, 2014

By:

Stanly Yamamoto
for: Anthony T. Fulcher
Attorneys for Petitioner/Plaintiff
SANTA CLARA VALLEY WATER DISTRICT

Dated: October 15, 2014

By: 

Marcia L. Scully
Robert C. Horton
Attorneys for Petitioner/Plaintiff
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Dated: October 15, 2014

By:

William J. Brunick
for: Leland McElhaney
Attorneys for Petitioner/Plaintiff
MOJAVE WATER AGENCY

1150031.1 10355-051

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 400 Capitol Mall, 27th Floor, Sacramento, CA 95814.

On October 15, 2014, I served true copies of the following document(s) described as **STATE AND FEDERAL CONTRACTOR PETITIONERS' REQUEST FOR JUDICIAL NOTICE** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Kronick, Moskovitz, Tiedemann & Girard for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Sacramento, California.

BY FAX TRANSMISSION: Based on a court order or an agreement of the parties to accept service by fax transmission, I faxed the document(s) to the persons at the fax numbers listed in the Service List. The document(s) were transmitted at or before 5:00 p.m. The telephone number of the sending facsimile machine was (916) 321-4555. No error was reported by the fax machine that I used. A record of the fax transmission was properly issued by the sending fax machine.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 15, 2014, at Sacramento, California.

Terri Whitman

SERVICE LIST BY EMAIL
Coordination Proceeding Special Title (Rule 1550(b)) Delta Stewardship Council Cases
Judicial Council Coordination Proceeding No. 4758

E. ROBERT WRIGHT FRIENDS OF THE RIVER 1418 20th Street, Suite 100 Sacramento, CA 95811 Telephone: (916) 442-3155 Facsimile: (916) 442-3396 Email: bwright@friendsoftheriver.org	Attorneys for Petitioner FRIENDS OF THE RIVER
MICHAEL B. JACKSON MICHAEL B. JACKSON, ATTORNEY AT LAW 429 West Main Street, Suite D P.O. Box 207 Quincy, CA 95971 Telephone: (530) 283-1007 Facsimile: (530) 283-4999 Email: miatty@sbcglobal.net	Attorneys for C-WIN, CSPA, AQUALLIANCE, and RESTORE THE DELTA
ADAM KEATS CHELSEA H. TU CENTER FOR BIOLOGICAL DIVERSITY 351 California Street, Suite 600 San Francisco, CA 94104 Telephone: (415) 436-9682 Facsimile: (415) 436-9683 Email: akeats@biologicaldiversity.org ctu@biologicaldiversity.org	Attorneys for CENTER FOR BIOLOGICAL DIVERSITY
THOMAS H. KEELING FREEMAN FIRM 1818 Grand Canal Blvd., Suite 4 Stockton, CA 95207 Telephone: (209) 474-1818 Facsimile: (209) 474-1245 Email: tkeeling@freemanfirm.com	Attorneys for Petitioners CENTRAL DELTA WATER AGENCY, SOUTH DELTA WATER AGENCY, LAFAYETTE RANCH, INC. and CINDY CHARLES
DANTE JOHN NOMELLINI DANTE JOHN NOMELLINI, JR. DANIEL A. MCDANIEL NOMELLINI, GRILLI & MCDANIEL 235 East Weber Avenue Stockton, CA 95202 Telephone: (209) 465-5883 Facsimile: (209) 465-3956 Email: ngmplcs@pacbell.net dantejr@pacbell.net damplc@pacbell.net	Attorneys for Petitioners CENTRAL DELTA WATER AGENCY, SOUTH DELTA WATER AGENCY, LAFAYETTE RANCH, INC. and CINDY CHARLES

JOHN H. HERRICK LAW OFFICE OF JOHN H. HERRICK 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Telephone: (209) 956-0150 Facsimile: (209) 956-0154 Email: jherrlaw@aol.com	Attorney for Petitioners CENTRAL DELTA WATER AGENCY, SOUTH DELTA WATER AGENCY, LAFAYETTE RANCH, INC. and CINDY CHARLES
S. DEAN RUIZ HARRIS, PERISHO & RUIZ 3439 Brookside Road, Suite 210 Stockton, CA 95219 Telephone: (209) 957-4254 Facsimile: (209) 957-5338 Email: dean@hpllp.com	Attorney for Petitioners CENTRAL DELTA WATER AGENCY, SOUTH DELTA WATER AGENCY, LAFAYETTE RANCH, INC. and CINDY CHARLES
OSHA R. MESERVE PATRICK M. SOLURI A LAW CORPORATION 1010 F Street, Suite 100 Sacramento, CA 95814 Telephone: (916) 455-7300 Facsimile: (916) 244-7300 Email: osha@semlawyers.com patrick@semlawyers.com	Attorneys for Petitioners LOCAL AGENCIES OF THE NORTH DELTA
STEVEN A. HERUM HERUM CRABTREE SUNTAG 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 Telephone: (209) 472-7700 Email: sherum@herumcrabtree.com	Attorney for Petitioner CITY OF STOCKTON
STEPHEN C. VOLKER DANIEL P. GARRETT-STEINMAN MARCUS BENJAMIN EICHENBERG LAUREN E. PAPPONE LAW OFFICES OF STEPHEN C. VOLKER 436 14th Street, Suite 1300 Oakland, CA 94612 Telephone: (510) 496-0600 Facsimile: (510) 496-1366 Email: svolker@volkerlaw.com dgarrett@volkerlaw.com mbeichenberg@volkerlaw.com lpappone@volkerlaw.com	Attorneys for Petitioners NORTH COAST RIVERS ALLIANCE, PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION, AND THE WINNEMEM WINTU TRIBE

ANDREA A. MATARAZZO JEFFREY K. DORSO PIONEER LAW GROUP, LLP 1122 S Street Sacramento, CA 95811 Telephone: (916) 287-9500 Facsimile: (916) 287-9515 Email: andrea@pioneerlawgroup.net Email: Jeffrey@pioneerlawgroup.net	Attorneys for Petitioner/Plaintiff WESTLANDS WATER DISTRICT
MICHAEL A. BRODSKY LAW OFFICES OF MICHAEL A. BRODSKY 201 Esplanade, Upper Suite Capitola, CA 95010 Telephone: (831) 469-3514 Facsimile: (831) 471-9705 Email: Michael@brodskylaw.net	Attorneys for Petitioners/Plaintiffs SAVE THE CALIFORNIA DELTA ALLIANCE
GREGORY K. WILKINSON CHARITY SCHILLER BEST BEST & KRIEGER LLP 3390 University Avenue, 5th Floor P.O. Box 1028 Riverside, CA 92502 Telephone: (951) 686-1450 Facsimile: (951) 686-3083 Email: Gregory.Wilkinson@bbklaw.com Charity.Schiller@bbklaw.com Melissa.Cushman@bbklaw.com	Attorneys for Petitioners STATE WATER CONTRACTORS, ANTELOPE VALLEY-EAST KERN WATER AGENCY, ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7, SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
STEFANIE D. MORRIS General Counsel State Water Contractors 1121 L Street, Suite 1050 Sacramento, CA 95814 Telephone: (916) 447-7357 Email: Smorris@swc.org	Attorney for Petitioner STATE WATER CONTRACTORS
STANLEY YAMAMOTO ANTHONY T. FULCHER SANTA CLARA VALLEY WATER DISTRICT 5750 Almaden Expressway San Jose, CA 95118-3686 Telephone: (408) 265-2600 Facsimile: (408) 265-2600 Email: syamamoto@valleywater.org afulcher@valleywater.org	Attorneys for Petitioner SANTA CLARA VALLEY WATER DISTRICT

MARCIA L. SCULLY ADAM C. KEAR LINUS S. MASOUREDIS ROBERT C. HORTON THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA 700 North Alameda Street Los Angeles, CA 90012-2944 Telephone: (213) 217-6336 Facsimile: (213) 217-6890 Email: mscully@mwdh2o.com akear@mwdh2o.com lmasouredis@mwdh2o.com rhorton@mwdh2o.com	Attorney for Petitioner THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
WILLIAM J. BRUNICK LELAND MCELHANEY BRUNICK, MCELHANEY & KENNEDY 1839 Commercenter West San Bernardino, CA 92408-3303 Telephone: (909) 889-8301 Facsimile: (909) 388-1889 Email: bbrunick@bmblawoffice.com lmcelhaney@bmblawoffice.com	Attorneys for Petitioner MOJAVE WATER AGENCY

SERVICE LIST BY U.S. MAIL

REPRESENTATIVE ATTORNEY	CASE
ADAM KEATS CENTER FOR BIOLOGICAL DIVERSITY 351 California Street, Suite 600 San Francisco, CA 94104 Telephone: (415) 436-9682 Facsimile: (415) 436-9683 Email: akeats@biologicaldiversity.org *Attorneys for Center for Biological Diversity* Representative Attorney for Petitioners *Friends of the River, C-WIN, SCPA, AquAlliance, and Restore the Delta and Center for Biological Diversity*	***California Water Impact Network, et al. v. Delta Stewardship Council*** Case No.: CPF-13-513047
OSHA R. MESERVE SOLURI MESERVE, A, LAW CORPORATION 1010 F Street, Suite 100 Sacramento, CA 95814 Telephone: (916) 455-7300 Facsimile: (916) 244-7300 Email: osha@semlawyers.com *Attorneys for Petitioner Local Agencies of the North Delta* Representative Attorney for Petitioners *Central Delta Water Agency, South Delta Water Agency, Lafayette Ranch, Inc. and Cindy Charles; and Local Agencies of the North Delta*	***Central Delta Water Agency, et al. v. Delta Stewardship Council*** Case No.: CPF-13-513048
STEVEN A. HERUM HERUM CRABTREE SUNTAG 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 Telephone: (209) 472-7700 Email: sherum@herumcrabtree.com *Attorneys for Petitioner City of Stockton* Representative Attorney for Petitioners *City of Stockton*	***City of Stockton v. Delta Stewardship Council*** Case No.: 39-2013-00298188-CU-WM-STK

STEPHEN C. VOLKER LAW OFFICES OF STEPHEN C. VOLKER 436 14th Street, Suite 1300 Oakland, CA 94612 Telephone: (510) 496-0600 Facsimile: (510) 496-1366 Email: svolker@volkerlaw.com *Attorneys for Petitioners, North Coast Rivers Alliance, Pacific Coast Federation of Fishermen's Associations, San Francisco Crab Boat Owners Association, and Winnemem Wintu Tribe*	***North Coast Alliance, et al. v. Delta Stewardship Council*** Case No.: 34-2013-80001534
DANIEL L. SIEGEL Supervising Deputy Attorney General P.O. Box 944255 Sacramento, CA 94244-2550 Telephone: (916) 323-9259 Facsimile: (916) 327-2319 Email: Daniel.Siegel@doj.ca.gov *Attorneys for Respondent/Defendant, Delta Stewardship Council*	***All Cases***
MICHAEL A. BRODSKY LAW OFFICES OF MICHAEL A. BRODSKY 201 Esplanade, Upper Suite Capitola, CA 95010 Telephone: (831) 469-3514 Facsimile: (831) 471-9705 Email: Michael@brodskylaw.net *Attorneys for Petitioner, Save the California Delta Alliance*	***Save the California Delta Alliance v. Delta Stewardship Council*** Case No.: CPF-13-513049
CHARITY SCHILLER BEST BEST & KRIEGER LLP P.O. Box 1028 Riverside, CA 92502 Telephone: (951) 686-1450 Facsimile: (951) 686-3083 Email: Charity.Schiller@bbklaw.com *Attorneys for Petitioners, State Water Contractors and Antelope Valley-East Kern Water Agency* Representative Attorney for Petitioners, *State Water Contractors, Antelope Valley-East Kern Water Agency, Alameda County Flood Control and Water Conservation District, Zone 7, San Bernardino Valley Municipal Water District, Santa Clarita Valley Water District, The Metropolitan Water District of Southern California, and Mojave Water Agency*	***State Water Contractors, et al. v. Delta Stewardship Council*** Case No.: 34-2013-80001530

Chair, Judicial Council of California Administrative Office of the Courts Attn: Office of the Appellate Court Services (Civil Case Coordination) 455 Golden Gate Avenue, 5th Floor San Francisco, CA 94102-3688	Ms. Christina Volkers Executive Officer Superior Court of California County of Sacramento 720 Ninth Street Sacramento, CA 95814

[Exempt From Filing Fee Government Code § 6103]

DANIEL J. O'HANLON, State Bar No. 122380
REBECCA R. AKROYD, State Bar No. 267305
ELIZABETH L. LEEPER, State Bar No. 280451
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation
400 Capitol Mall, 27th Floor
Sacramento, California 95814
Telephone: (916) 321-4500
Facsimile: (916) 321-4555

Attorneys for Petitioners/Plaintiffs
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY and WESTLANDS WATER DISTRICT

ANDREA A. MATARAZZO, State Bar No. 179198
JEFFREY K. DORSO, State Bar No. 219379
PIONEER LAW GROUP, LLP
1122 S Street
Sacramento, CA 95811
Telephone: (916) 287-9500
Facsimile: (916) 287-9515

Attorneys for Petitioner/Plaintiff
WESTLANDS WATER DISTRICT

[Additional Counsel on Next Two Pages]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

Coordination Proceeding Special Title (Rule 3.550) DELTA STEWARDSHIP COUNCIL CASES	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4758 **DECLARATION OF ELIZABETH L. LEEPER IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE** The Hon. Michael P. Kenny, Dept. 31 Action Filed: May 24, 2013

ADDITIONAL COUNSEL

HAROLD CRAIG MANSON, State Bar No. 102298
General Counsel
PHILIP A. WILLIAMS, State Bar No. 296683
Deputy General Counsel
WESTLANDS WATER DISTRICT
c/o Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814
Telephone: (916) 321-4500
Facsimile: (916) 321-4555

Attorneys for Petitioner/Plaintiff
WESTLANDS WATER DISTRICT

JON D. RUBIN, State Bar No. 196944
General Counsel
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
c/o Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814
Telephone: (916) 321-4500
Facsimile: (916) 321-4555

Attorneys for Petitioner/Plaintiff
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

GREGORY K. WILKINSON, State Bar No. 054809
CHARITY SCHILLER, State Bar No. 234291
BEST BEST & KRIEGER LLP
3390 University Avenue, 5th Floor
P.O. Box 1028
Riverside, CA 92502
Telephone: (951) 686-1450
Facsimile: (951) 686-3083

Attorneys for Petitioners/Plaintiffs
STATE WATER CONTRACTORS; ANTELOPE VALLEY-EAST KERN WATER AGENCY; ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7; and SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

STEFANIE D. MORRIS, State Bar No. 239787
General Counsel
STATE WATER CONTRACTORS
1121 L Street, Suite 1050
Sacramento, CA 95814
Telephone: (916) 447-7357
Facsimile: (916) 447-2734

Attorney for Petitioner/Plaintiff
STATE WATER CONTRACTORS

STANLY YAMAMOTO, State Bar No. 092381
District Counsel
ANTHONY T. FULCHER, State Bar No. 192690
Senior Assistant District Counsel
SANTA CLARA VALLEY WATER DISTRICT
5750 Almaden Expressway
San Jose, CA 95118-3686
Telephone: (408) 265-2600
Facsimile: (408) 445-1435

Attorneys for Petitioner/Plaintiff
SANTA CLARA VALLEY WATER DISTRICT

MARCIA L. SCULLY, State Bar No. 080648
General Counsel
ADAM C. KEAR, State Bar No. 207584
Chief Deputy General Counsel
LINUS S. MASOUREDIS, State Bar No. 077322
Chief Deputy General Counsel
ROBERT C. HORTON, State Bar No. 235187
Sr. Deputy General Counsel
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
700 North Alameda Street
Los Angeles, CA 90012-2944
Mailing address: P.O. Box 54153
Los Angeles, CA 90054-0153
Telephone: (213) 217-6336
Facsimile: (213) 217-6890

Attorneys for Petitioner/Plaintiff
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

WILLIAM J. BRUNICK, State Bar No. 046289
LELAND MCELHANEY, State Bar No. 039257
BRUNICK, MCELHANEY & KENNEDY
1839 Commercenter West
San Bernardino, CA 92408-3303
Telephone: (909) 889-8301
Facsimile: (909) 388-1889

Attorneys for Petitioner/Plaintiff
MOJAVE WATER AGENCY

DECLARATION OF ELIZABETH LEEPER

I, Elizabeth L. Leeper, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am an associate with Kronick, Moskovitz, Tiedemann & Girard, attorneys of record for Petitioners/Plaintiffs San Luis & Delta-Mendota Water Authority and Westlands Water District. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify thereto. I make this declaration in support of the State and Federal Contractor Petitioners' Joint Opening Brief and related Request for Judicial Notice.

2. On October 8, 2014, I accessed the internet address: http://awpw.assembly.ca.gov/sites/awpw.assembly.ca.gov/files/publications/2009WaterBillsPackage_LegislativeHistory.pdf. This webpage contained The 2009 Delta & Water Legislation Legislative History ("Legislative History"), compiled by Alf W. Brandt and Igor Lacan – Assembly Water, Parks and Wildlife Committee in January 2010. The Legislative History contained the Preprint Senate Bill No. 1, proposed by Senator Simitian, August 4, 2009. A true and correct copy of Preprint Senate Bill No. 1, proposed by Senator Simitian, August 4, 2009, as it appeared on the above webpage and in the Legislative History is attached hereto as Exhibit 1.

3. On October 8, 2014, I accessed the internet address: http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sb_12_bill_20090226_amended_ sen_v98.html. This webpage contained the amended Senate Bill No. 12, amended by the Senate on or about February 26, 2009. A true and correct copy of the February 26, 2009 version of Senate Bill No. 12 as it appeared on that webpage is attached hereto as Exhibit 2.

4. On October 8, 2014, I accessed the internet address: http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sb_12_bill_20090909_proposed.html. This webpage contained the Proposed Bill Text Senate Bill No. 12, Proposed Conference Report No. 1, prepared on or about September 9, 2009. A true and correct copy of the September 9, 2009 Proposed Conference Report No. 1 as it appeared on that webpage is attached hereto as Exhibit 3.

5. On October 8, 2014, I accessed the internet address: http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sbx7_1_bill_20091023_introduced.html. The webpage contained

Senate Bill No. x7-1 as introduced by Senator Steinberg on or about October 23, 2009. A true and correct copy of the October 23, 2009 version of Senate Bill No. x7-1 as it appeared on that webpage is attached hereto as Exhibit 4.

6. On October 8, 2014, I accessed the internet address: http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sbx7_1_bill_20091112_chaptered.html. The webpage contained Senate Bill No. x7-1 as chaptered and filed with the Secretary of State on or about November 12, 2009. A true and correct copy of the November 12, 2009 chaptered Senate Bill No. X7-1 as it appeared on that webpage is attached hereto as Exhibit 5.

7. On October 8, 2014, our Law Library Manager, Denise Pagh, contacted the California Senate Television Program and requested a copy of the televised Legislative Conference Committee Hearing on Senate Bills 12, 229, and 458 and Assembly Bills 39 and 49, held on September 3, 2009. On October 10, 2014, my firm sent a messenger to the offices of the Senate Television at 1020 N Street, Sacramento, CA, and received a copy of the record of proceedings for the September 3, 2009 Committee Hearing. A true and correct copy of the record of proceedings for the September 3, 2009 Committee Hearing, as obtained from the offices of the Senate Television, is attached hereto as Exhibit 6.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed October 15, 2014, at Sacramento, California.

Elizabeth L. Leeper

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 400 Capitol Mall, 27th Floor, Sacramento, CA 95814.

On October 15, 2014, I served true copies of the following document(s) described as **DECLARATION OF ELIZABETH L. LEEPER IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Kronick, Moskovitz, Tiedemann & Girard for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Sacramento, California.

BY FAX TRANSMISSION: Based on a court order or an agreement of the parties to accept service by fax transmission, I faxed the document(s) to the persons at the fax numbers listed in the Service List. The document(s) were transmitted at or before 5:00 p.m. The telephone number of the sending facsimile machine was (916) 321-4555. No error was reported by the fax machine that I used. A record of the fax transmission was properly issued by the sending fax machine.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 15, 2014, at Sacramento, California.

Terri Whitman

SERVICE LIST BY EMAIL
Coordination Proceeding Special Title (Rule 1550(b)) Delta Stewardship Council Cases
Judicial Council Coordination Proceeding No. 4758

E. ROBERT WRIGHT FRIENDS OF THE RIVER 1418 20th Street, Suite 100 Sacramento, CA 95811 Telephone: (916) 442-3155 Facsimile: (916) 442-3396 Email: bwright@friendsoftheriver.org	Attorneys for Petitioner FRIENDS OF THE RIVER
MICHAEL B. JACKSON MICHAEL B. JACKSON, ATTORNEY AT LAW 429 West Main Street, Suite D P.O. Box 207 Quincy, CA 95971 Telephone: (530) 283-1007 Facsimile: (530) 283-4999 Email: mjatty@sbcglobal.net	Attorneys for C-WIN, CSPA, AQUALLIANCE, and RESTORE THE DELTA
ADAM KEATS CHELSEA H. TU CENTER FOR BIOLOGICAL DIVERSITY 351 California Street, Suite 600 San Francisco, CA 94104 Telephone: (415) 436-9682 Facsimile: (415) 436-9683 Email: akeats@biologicaldiversity.org ctu@biologicaldiversity.org	Attorneys for CENTER FOR BIOLOGICAL DIVERSITY
THOMAS H. KEELING FREEMAN FIRM 1818 Grand Canal Blvd., Suite 4 Stockton, CA 95207 Telephone: (209) 474-1818 Facsimile: (209) 474-1245 Email: tkeeling@freemanfirm.com	Attorneys for Petitioners CENTRAL DELTA WATER AGENCY, SOUTH DELTA WATER AGENCY, LAFAYETTE RANCH, INC. and CINDY CHARLES
DANTE JOHN NOMELLINI DANTE JOHN NOMELLINI, JR. DANIEL A. MCDANIEL NOMELLINI, GRILLI & MCDANIEL 235 East Weber Avenue Stockton, CA 95202 Telephone: (209) 465-5883 Facsimile: (209) 465-3956 Email: ngmplcs@pacbell.net dantejr@pacbell.net damplc@pacbell.net	Attorneys for Petitioners CENTRAL DELTA WATER AGENCY, SOUTH DELTA WATER AGENCY, LAFAYETTE RANCH, INC. and CINDY CHARLES

JOHN H. HERRICK LAW OFFICE OF JOHN H. HERRICK 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Telephone: (209) 956-0150 Facsimile: (209) 956-0154 Email: jherrlaw@aol.com	Attorney for Petitioners CENTRAL DELTA WATER AGENCY, SOUTH DELTA WATER AGENCY, LAFAYETTE RANCH, INC. and CINDY CHARLES
S. DEAN RUIZ HARRIS, PERISHO & RUIZ 3439 Brookside Road, Suite 210 Stockton, CA 95219 Telephone: (209) 957-4254 Facsimile: (209) 957-5338 Email: dean@hpllp.com	Attorney for Petitioners CENTRAL DELTA WATER AGENCY, SOUTH DELTA WATER AGENCY, LAFAYETTE RANCH, INC. and CINDY CHARLES
OSHA R. MESERVE PATRICK M. SOLURI A LAW CORPORATION 1010 F Street, Suite 100 Sacramento, CA 95814 Telephone: (916) 455-7300 Facsimile: (916) 244-7300 Email: osha@semlawyers.com patrick@semlawyers.com	Attorneys for Petitioners LOCAL AGENCIES OF THE NORTH DELTA
STEVEN A. HERUM HERUM CRABTREE SUNTAG 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 Telephone: (209) 472-7700 Email: sherum@herumcrabtree.com	Attorney for Petitioner CITY OF STOCKTON
STEPHEN C. VOLKER DANIEL P. GARRETT-STEINMAN MARCUS BENJAMIN EICHENBERG LAUREN E. PAPPONE LAW OFFICES OF STEPHEN C. VOLKER 436 14th Street, Suite 1300 Oakland, CA 94612 Telephone: (510) 496-0600 Facsimile: (510) 496-1366 Email: svolker@volkerlaw.com dgarrett@volkerlaw.com mbeichenberg@volkerlaw.com lpappone@volkerlaw.com	Attorneys for Petitioners NORTH COAST RIVERS ALLIANCE, PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION, AND THE WINNEMEM WINTU TRIBE

ANDREA A. MATARAZZO JEFFREY K. DORSO PIONEER LAW GROUP, LLP 1122 S Street Sacramento, CA 95811 Telephone: (916) 287-9500 Facsimile: (916) 287-9515 Email: andrea@pioneerlawgroup.net Email: Jeffrey@pioneerlawgroup.net	Attorneys for Petitioner/Plaintiff WESTLANDS WATER DISTRICT
MICHAEL A. BRODSKY LAW OFFICES OF MICHAEL A. BRODSKY 201 Esplanade, Upper Suite Capitola, CA 95010 Telephone: (831) 469-3514 Facsimile: (831) 471-9705 Email: Michael@brodskylaw.net	Attorneys for Petitioners/Plaintiffs SAVE THE CALIFORNIA DELTA ALLIANCE
GREGORY K. WILKINSON CHARITY SCHILLER BEST BEST & KRIEGER LLP 3390 University Avenue, 5th Floor P.O. Box 1028 Riverside, CA 92502 Telephone: (951) 686-1450 Facsimile: (951) 686-3083 Email: Gregory.Wilkinson@bbklaw.com Charity.Schiller@bbklaw.com Melissa.Cushman@bbklaw.com	Attorneys for Petitioners STATE WATER CONTRACTORS, ANTELOPE VALLEY-EAST KERN WATER AGENCY, ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7, SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
STEFANIE D. MORRIS General Counsel State Water Contractors 1121 L Street, Suite 1050 Sacramento, CA 95814 Telephone: (916) 447-7357 Email: Smorris@swc.org	Attorney for Petitioner STATE WATER CONTRACTORS
STANLEY YAMAMOTO ANTHONY T. FULCHER SANTA CLARA VALLEY WATER DISTRICT 5750 Almaden Expressway San Jose, CA 95118-3686 Telephone: (408) 265-2600 Facsimile: (408) 265-2600 Email: syamamoto@valleywater.org afulcher@valleywater.org	Attorneys for Petitioner SANTA CLARA VALLEY WATER DISTRICT

MARCIA L. SCULLY ADAM C. KEAR LINUS S. MASOUREDIS ROBERT C. HORTON THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA 700 North Alameda Street Los Angeles, CA 90012-2944 Telephone: (213) 217-6336 Facsimile: (213) 217-6890 Email: mscully@mwdh2o.com akear@mwdh2o.com lmasouredis@mwdh2o.com rhorton@mwdh2o.com	Attorney for Petitioner THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
WILLIAM J. BRUNICK LELAND MCELHANEY BRUNICK, MCELHANEY & KENNEDY 1839 Commercenter West San Bernardino, CA 92408-3303 Telephone: (909) 889-8301 Facsimile: (909) 388-1889 Email: bbrunick@bmblawoffice.com lmcelhaney@bmblawoffice.com	Attorneys for Petitioner MOJAVE WATER AGENCY

SERVICE LIST BY U.S. MAIL

REPRESENTATIVE ATTORNEY	CASE
ADAM KEATS CENTER FOR BIOLOGICAL DIVERSITY 351 California Street, Suite 600 San Francisco, CA 94104 Telephone: (415) 436-9682 Facsimile: (415) 436-9683 Email: akeats@biologicaldiversity.org *Attorneys for Center for Biological Diversity* Representative Attorney for Petitioners *Friends of the River, C-WIN, SCPA, AquAlliance, and Restore the Delta and Center for Biological Diversity*	***California Water Impact Network, et al. v. Delta Stewardship Council*** Case No.: CPF-13-513047
OSHA R. MESERVE SOLURI MESERVE, A, LAW CORPORATION 1010 F Street, Suite 100 Sacramento, CA 95814 Telephone: (916) 455-7300 Facsimile: (916) 244-7300 Email: osha@semlawyers.com *Attorneys for Petitioner Local Agencies of the North Delta* Representative Attorney for Petitioners *Central Delta Water Agency, South Delta Water Agency, Lafayette Ranch, Inc. and Cindy Charles; and Local Agencies of the North Delta*	***Central Delta Water Agency, et al. v. Delta Stewardship Council*** Case No.: CPF-13-513048
STEVEN A. HERUM HERUM CRABTREE SUNTAG 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 Telephone: (209) 472-7700 Email: sherum@herumcrabtree.com *Attorneys for Petitioner City of Stockton* Representative Attorney for Petitioners *City of Stockton*	***City of Stockton v. Delta Stewardship Council*** Case No.: 39-2013-00298188-CU-WM-STK

STEPHEN C. VOLKER LAW OFFICES OF STEPHEN C. VOLKER 436 14th Street, Suite 1300 Oakland, CA 94612 Telephone: (510) 496-0600 Facsimile: (510) 496-1366 Email: svolker@volkerlaw.com *Attorneys for Petitioners, North Coast Rivers Alliance, Pacific Coast Federation of Fishermen's Associations, San Francisco Crab Boat Owners Association, and Winnemem Wintu Tribe*	***North Coast Alliance, et al. v. Delta Stewardship Council*** Case No.: 34-2013-80001534
DANIEL L. SIEGEL Supervising Deputy Attorney General P.O. Box 944255 Sacramento, CA 94244-2550 Telephone: (916) 323-9259 Facsimile: (916) 327-2319 Email: Daniel.Siegel@doj.ca.gov *Attorneys for Respondent/Defendant, Delta Stewardship Council*	***All Cases***
MICHAEL A. BRODSKY LAW OFFICES OF MICHAEL A. BRODSKY 201 Esplanade, Upper Suite Capitola, CA 95010 Telephone: (831) 469-3514 Facsimile: (831) 471-9705 Email: Michael@brodskylaw.net *Attorneys for Petitioner, Save the California Delta Alliance*	***Save the California Delta Alliance v. Delta Stewardship Council*** Case No.: CPF-13-513049
CHARITY SCHILLER BEST BEST & KRIEGER LLP P.O. Box 1028 Riverside, CA 92502 Telephone: (951) 686-1450 Facsimile: (951) 686-3083 Email: Charity.Schiller@bbklaw.com *Attorneys for Petitioners, State Water Contractors and Antelope Valley-East Kern Water Agency* Representative Attorney for Petitioners, *State Water Contractors, Antelope Valley-East Kern Water Agency, Alameda County Flood Control and Water Conservation District, Zone 7, San Bernardino Valley Municipal Water District, Santa Clarita Valley Water District, The Metropolitan Water District of Southern California, and Mojave Water Agency*	***State Water Contractors, et al. v. Delta Stewardship Council*** Case No.: 34-2013-80001530

Chair, Judicial Council of California Administrative Office of the Courts Attn: Office of the Appellate Court Services (Civil Case Coordination) 455 Golden Gate Avenue, 5th Floor San Francisco, CA 94102-3688	Ms. Christina Volkers Executive Officer Superior Court of California County of Sacramento 720 Ninth Street Sacramento, CA 95814

EXHIBIT 1

PREPRINT SENATE BILL No. 1

Proposed by Senator Simitian

August 4, 2009

DRAFT

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

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:

DRAFT

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

PART 1. GENERAL PROVISIONS

Chapter 1. Short Title and Legislative Findings

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

85001. The Legislature finds and declares that:

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

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

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

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

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

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

DRAFT

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

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

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

Chapter 2. Delta Policy

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

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

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

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

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

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

(5) Achieve water quality objectives in the Delta.

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

DRAFT

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

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

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

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

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

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

(c) The Legislature finds and declares as follows:

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

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

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

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

DRAFT

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

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

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

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

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

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

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

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

Chapter 3. Miscellaneous Provisions

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

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

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

DRAFT

Chapter 4. Definitions

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

DRAFT

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

85064. "Public water agency" means a public entity, as defined in Section 514, that provides water service, as defined in Section 515.

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

85066. "Strategic Plan" means both the "Delta Vision Strategic Plan" issued by the Delta Vision Blue Ribbon Task Force on October 17, 2008, and the "Delta Vision Implementation Report" adopted by the Delta Vision Committee and dated December 31, 2008. Where the two documents conflict, the "Delta Vision Strategic Plan" issued by the Delta Vision Blue Ribbon Task Force shall prevail.

PART 2. EARLY ACTIONS

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

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

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

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

DRAFT

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

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

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

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

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

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

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

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

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

85085. The department shall do all of the following:

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

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

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

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

DRAFT

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

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

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

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

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

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

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

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

DRAFT

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

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

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

PART 3. DELTA GOVERNANCE

Chapter 1. Delta Stewardship Council

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

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

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

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

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

DRAFT

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

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

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

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

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

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

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

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

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

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

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

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

DRAFT

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

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

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

Chapter 2. Mission, Duties, and Responsibilities of the Council

85210. The council has all of the following powers:

(a) To sue or be sued.

(b) To enter into contracts.

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

(d) To delegate administrative functions to council staff.

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

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

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

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

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

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

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

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

DRAFT

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

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

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

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

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

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

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

DRAFT

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

(a) The Delta Protection Commission's Resource Management Plan.

(b) The Delta Conservancy's Strategic Plan.

(c) The Suisun Marsh Management Plan.

(d) All annual water project operation plans.

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

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

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

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

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

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

DRAFT

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

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

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

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

Chapter 3. Delta Watermaster

85230. (a) The board shall appoint a special master for the Delta, whose title shall be "the Delta Watermaster."

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

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

(1) Water rights laws or water rights enforcement.

(2) Water quality laws or water quality enforcement.

(3) State Water Project or federal Central Valley Project operations.

(4) State or federal endangered species laws or endangered species enforcement.

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

85231. (a) The Delta Watermaster shall be an agent of the board, and shall 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 Delta

DRAFT

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

(1) Enforce water rights for diversions.

(2) Exercise the state's public trust responsibilities.

(3) Enforce the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code) as to diversions.

(4) Make judgments as to reasonable use pursuant to Section 2 of Article X of the California Constitution.

(5) Enforce water quality objectives established in the Delta Water Quality Control Plan.

(6) Consider and decide on petitions for changes, with a duration of 90 days or less, in water right permits or licenses for diversions within the Delta watershed.

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

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

Chapter 4. Delta Independent Science Board

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

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

DRAFT

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

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

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

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

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

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

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

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

(6) Prepare discussion papers and interactive lectures.

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

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

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

PART 5. DELTA FINANCE

DRAFT

Chapter 1. General

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.

DRAFT

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

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

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

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

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

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

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

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

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

Chapter 2. State Water Project and Central Valley Project

85404. (a) The following actions and projects are subject to the provisions of this division and shall be paid for entirely by persons or entities that contract to receive water from the State Water Project and by persons or entities who contract to receive water from the federal Central Valley Project:

DRAFT

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

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

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

Chapter 3. Other Users of Water from the Bay-Delta Watershed

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

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

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

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

DRAFT

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

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

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

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

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

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

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

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

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

DRAFT

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

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

Chapter 4. Bonds

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

(1) The word "department" in that Chapter 8 means the council.

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

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

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

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

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

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

DRAFT

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

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

DRAFT

O

EXHIBIT 2

BILL NUMBER: SB 12 AMENDED
BILL TEXT

AMENDED IN SENATE FEBRUARY 26, 2009

INTRODUCED BY Senator Simitian

DECEMBER 1, 2008

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

This bill would enact the Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement Act of 2009. The bill would establish the Delta Ecosystem and Water Council. The council would be required to prepare and adopt a plan referred to as the California Delta Ecosystem and Water Plan (plan) to advance the coequal goals of restoring the Delta ecosystem and creating a more reliable water supply in California. The council would be required to establish a goal for the adoption of the plan by December 1, 2010. If the plan is not completed by that date, the council would be required to adopt an interim strategic plan. The plan would be required to include specified components, including species protection requirements, Delta water flow and water quality requirements, and information relating to land use in the Delta.

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

undertaken by local governments, the bill would impose a state-mandated local program.

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

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

The bill would revise the membership of the Delta Protection Commission to include one of the members of the Central Valley Flood Protection Board, or that member's sole designee. The bill would require the commission to extend invitations to specified federal agencies to participate in the activities of the commission in a nonvoting capacity. The bill would require the commission to revise its resource management plan to be consistent with the plan required to be adopted by the council. The bill would require Delta counties, as defined, and the cities within those counties, to revise their general plans and submit the revised plans to the commission. By imposing requirements on those counties and cities with regard to the preparation of their general plans, the bill would impose a state-mandated local program. The commission would be required to review and certify the general plans of those counties and cities for consistency with its resource management plan and the plan adopted by the council.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

~~The bill would establish in state government the Delta Water and Land Use Authority, prescribe the composition of its board of directors, and grant to the authority a broad range of powers relating to the preservation of the Delta ecosystem and the delivery of a reliable state water supply. The bill would authorize the authority to contract to design, construct, and own one or more facilities to move water from the Sacramento River to federal and~~

~~state pumping facilities on behalf of the State Water Project, the federal Central Valley Project, and local water agencies that can reasonably be served by those facilities.~~

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

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

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

~~The bill would subject any approval of development by a city or county in specified zones of the Delta, and certain lands adjacent to the Delta, to review by the Delta Protection Commission. The commission would be prohibited from approving that development unless specified requirements are met. The bill would require the authority to adopt or reject these land use decisions of the commission. Public agencies would be required to manage agricultural lands they own within the Delta in a specified manner.~~

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

Vote: ~~2/3~~ *majority* . Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ *yes* .

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 29735 of the Public Resources Code is amended to read:

29735. There is hereby created the Delta Protection Commission

consisting of ~~23~~ *24* members as follows:

(a) One member of the board of supervisors, or his or her designee, of each of the five counties within the ~~delta~~ *Delta* whose supervisorial district is within the primary zone shall be appointed by the board of supervisors of the county.

(b) (1) Three elected city council members shall be selected and appointed by city selection committees, from regional and area councils of government, one in each of the following areas:

(A) One from the north ~~delta~~ *Delta* , consisting of the Counties of Yolo and Sacramento.

(B) One from the south ~~delta~~ *Delta* , consisting of the County of San Joaquin.

(C) One from the west ~~delta~~ *Delta* , consisting of the Counties of Contra Costa and Solano.

(2) A city council member may select a designee for purposes of paragraph (1).

(c) (1) One member each from the board of directors of five different reclamation districts that are located within the primary zone who are residents of the ~~delta~~ *Delta* , and who are elected by the trustees of reclamations districts within the following areas:

(A) Two members from the area of the North Delta Water Agency as described in Section 9.1 of the North Delta Water Agency Act (Chapter 283 of the Statutes of 1973), provided at least one member is also a member of the Delta Citizens Municipal Advisory Council.

(B) One member from the west ~~delta~~ *Delta* consisting of the area of Contra Costa County within the ~~delta~~ *Delta* .

(C) One member from the area of the Central Delta Water Agency as described in Section 9.1 of the Central Delta Water Agency Act (Chapter 1133 of the Statutes of 1973).

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

(2) Each reclamation district may nominate one director to be a member. The member from an area shall be selected from among the nominees by a majority vote of the reclamation districts in that area. The member may select a designee for this purpose. For purposes of this section, each reclamation district shall have one vote. The north ~~delta~~ *Delta* area shall conduct separate votes to select each of its two members.

(d) The Director of Parks and Recreation, or the director's sole designee.

(e) The Director of Fish and Game, or the director's sole designee.

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

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

(h) The Director of Boating and Waterways, or the director's sole designee.

(i) The Director of Water Resources, or the director's sole designee.

(j) The public member of the California Bay-Delta Authority who represents the ~~delta~~ *Delta* region or his or her designee.

(k) (1) The Governor shall appoint three members and three alternates from the general public who are ~~delta~~ *Delta* residents or ~~delta~~ *Delta*

landowners *of the Delta* , as follows:

(A) One member and one alternate shall represent the interests of production agriculture with a background in promoting the agricultural viability of ~~delta~~ *Delta* farming.

(B) One member and one alternate shall represent the interests of conservation of wildlife and habitat resources of the ~~delta~~ *Delta* region and ecosystem *fo the Delta*

.

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

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

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

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

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

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

DIVISION 26.8. SACRAMENTO-SAN JOAQUIN RIVER DELTA, CLEAN DRINKING WATER, WATER SUPPLY SECURITY, AND ENVIRONMENTAL IMPROVEMENT ACT OF 2009

CHAPTER 1. GENERAL PROVISIONS

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

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

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

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

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

(2) Two-thirds of the state's residents rely on the Delta for part or all of their drinking water. One-sixth of all irrigated lands in

the nation are located in this watershed and water exported from the Delta irrigates 45 percent of the fruits and vegetables produced in the United States. California's water supply is limited and demand will grow as the state's population increases. Despite polices to encourage more efficient water use, residential use measured in gallons per capita per day remains unchanged since the 1970s and agriculture uses the same volumes of water as in the 1970s though irrigated lands have shifted to orchards, vineyards, and other permanent crops.

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

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

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

(6) The Delta's 635 miles of boating waterways are served by 138 marinas containing 11,700 in water boat slips and dry storage for 5,500 boats. In 2000, there were an estimated 6.4 million boating-related visitor days, with 2.13 million boating trips. Other major recreational activities in the Delta include fishing, waterfowl, and upland game bird hunting, wildlife viewing, bird watching, and windsurfing.

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

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

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

(2) Endangered species and fisheries have continued to decline in the Delta and disruptive nonnative species continue to invade. In the fall of 2004, routine fish surveys registered sharp declines in the numbers of several open-water (pelagic) species, including the Delta smelt, already listed as threatened under the federal and state endangered species laws. Subsequent surveys have confirmed the trend, raising concerns that the Delta smelt, which are sometimes seen as

an indicator of ecosystem health in the Delta, risks extinction if a solution is not found quickly. In the winter of 2008, salmon populations reliant on the Delta declined precipitously, contributing to closure of the salmon fishery that year.

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

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

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

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

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

(f) The State of California must recognize and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place, an action critical to achieving the coequal goals.

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

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

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

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

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

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

(m) Despite the enactment of the Johnston-Baker-Andal-Boatwright

Delta Protection Act of 1992, development has continued to expand in the Delta, potentially threatening state interests and heightening safety risks in the region. Substantial population increases in the region are projected for the coming decades, increasing urbanization pressures in both the secondary zone and the primary zone. In addition to increasing flood risks, urban development outside of the primary zone can also foreclose critical future ecosystem revitalization and climate change adaptation opportunities, as well as limit improvements to the existing water export system. Active floodplains are critical ecosystem revitalization sites, and should not be cut off by levees protecting new development. lands just above current tidal elevation are crucial sites to accommodate long-range sea level rise, and should be conserved for that reason.

79852. By enacting this division, it is the intent of the legislature to facilitate the implementation of a program for the sustainable management of the Delta ecosystem and to establish a governance structure that will coordinate efforts across state agencies to develop a legally enforceable California Delta Ecosystem and Water Plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) "Delta Protection Commission" or "commission" means the commission established pursuant to Section 29735 of the Public

Resources Code.

(o) "Delta watershed" means ____.

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

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

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

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

CHAPTER 2. DELTA ECOSYSTEM RESTORATION AND WATER SUPPLY RELIABILITY

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

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

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

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

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

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

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

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

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

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

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

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

(e) The achievement of increased water supply reliability through the maintenance of diverse regional water supply portfolios, and by establishing a statewide target to recycle 1.5 million acre-feet of water annually by 2020, encouraging local water agencies to at least triple the current statewide capacity for generating new water supplies through ocean and brackish water desalination by 2020, requiring the state board to establish goals by 2015 for infiltration and direct use of urban stormwater runoff throughout the Delta watershed and its export areas, requiring agencies to ensure that accurate and timely information is collected and reported on all surface water and groundwater diversions in California by 2012, requiring that all water purveyors develop an integrated contingency plan by 2015 in the event of Delta water supply curtailments or drought, and establishing a regulatory framework that encourages efficient and integrated management of water resources at local, regional, and statewide levels.

CHAPTER 4. DELTA ECOSYSTEM AND WATER COUNCIL

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

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

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

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

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

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

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

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

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

(g) The Commissioner of the United States Bureau of Reclamation, the Director of the United States Fish and Wildlife Service, the Director of the National Marine Fisheries Service, and the Director of the United States Geological Service, if those federal officials wish to participate, as well as the director of the department and the Director of Fish and Game, shall be nonvoting ex officio members of the board of directors.

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

79862. (a) Each member of the board shall receive the salary

provided for in Section 11564 of the Government Code.

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

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

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

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

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

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

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

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

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

79870. The council shall do all of the following:

(a) Prepare and adopt a plan referred to as the California Delta Ecosystem and Water Plan that incorporates the plans of other agencies, as appropriate, to carry out the requirements of this division.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The council shall prepare a list of all applicable legal requirements, including requirements relating to federal and state endangered species laws, that pertain to the Delta for incorporation into the plan.

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

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

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

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

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

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

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

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

CHAPTER 6. DELTA ECOSYSTEM AND WATER PLAN

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

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

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

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

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

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

(d) Establish principles and procedures for adaptive management.

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

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

(g) Establish a detailed financing plan that identifies costs,

benefits, and revenue sources.

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

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

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

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

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

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

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

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

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

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

CHAPTER 7. DELTA ECOSYSTEM AND WATER FUND

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

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

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

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

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

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

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

(e) The moneys in the fund, upon appropriation by the Legislature to the council, shall be expended for the exclusive purpose of

implementing this division.

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

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

CHAPTER 8. THE CALIFORNIA DELTA CONSERVANCY

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

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

(b) The Governor shall appoint the following members:

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

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

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

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

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

79892. The conservancy shall do all of the following:

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

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

(c) Enter into contracts to buy and sell land and other property, and acquire property through the State Public Works Board. The conservancy shall be exempt from approval processes of the Department of General Services.

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

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

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

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

CHAPTER 9. THE DELTA PROTECTION COMMISSION

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

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

(c) The Delta Protection Commission shall review and certify all general plans of Delta counties and cities within Delta counties for

consistency with its resource management plan and the plan.

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

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

(f) General plans of Delta counties and cities within those counties shall be revised and submitted for consistency review to the Delta Protection Commission upon completion. The council may review local plans, or exercise consistency determination authority for individual projects in the primary or secondary zones, at its discretion.

CHAPTER 10. THE DELTA SCIENCE AND ENGINEERING BOARD AND THE DELTA SCIENCE AND ENGINEERING PROGRAM

79900. The legislature finds and declares all of the following:

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

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

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

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

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

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

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

(b) Organize, assess, and synthesize the best available science for policymakers and the council.

(c) Review all major projects undertaken to advance the goals of Delta Vision.

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

(e) Establish communication channels to effectively transmit

science and engineering results to broader and more diverse audiences, coordinating with the council's Public Advisory Group.

(f) Prepare discussion papers and interactive lectures.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. All matter omitted in this version of the bill appears in the bill as introduced in the Senate, December 1, 2008 (JR11)

EXHIBIT 3

BILL NUMBER: SB 12 PROPOSED
BILL TEXT
PROPOSED CONFERENCE REPORT SEPTEMBER 9, 2009
CONFERENCE REPORT NO. 1
PROPOSED IN CONFERENCE SEPTEMBER 9, 2009
AMENDED IN ASSEMBLY JULY 9, 2009
AMENDED IN SENATE JUNE 2, 2009
AMENDED IN SENATE MAY 5, 2009
AMENDED IN SENATE FEBRUARY 26, 2009

INTRODUCED BY Senator Simitian

DECEMBER 1, 2008

~~An act relating to Sacramento-San Joaquin Delta.~~
An act to amend Sections 6103.1 and 6103.4 of the Government Code, and to amend Section 1120 of, to add Division 35 (commencing with Section 85000) to, to add Chapter 2 (commencing with Section 85320) to Part 4 of Division 35 of, and to repeal Division 26.4 (commencing with Section 79400) of, the Water Code, relating to resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 12, as amended, Simitian. *Resources:* Sacramento-San Joaquin Delta ~~Stewardship Council.~~ *Council.*

(1) Existing law generally provides that the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, may not be required to pay any fee for the performance of an official service. Existing law exempts from this provision any fee or charge for official services required pursuant to specified provisions of law relating to water use or water quality.

This bill would expand the exemption to other provisions relating to water use, including provisions that require the payment of fees to the State Water Resources Control Board (board) for official services relating to statements of water diversion and use.

(2) Existing law requires the Secretary of the Natural Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill would establish the Delta Stewardship Council as an independent agency of the state. The council would be required to consist of 7 members appointed in a specified manner. The bill would specify the powers of the council. The council would be required to establish a consultation process for the purposes of the act. The bill would require a state or local public agency that proposes to undertake certain proposed actions that will occur within the boundaries of the Delta or the Suisun Marsh to prepare, and submit to the council, a specified written certification of consistency with the Delta Plan, created pursuant to AB 39 of the 2009-10 Regular Session, prior to taking those actions. By imposing these requirements on a local public agency, the bill would impose a state-mandated local program. The bill would establish an appeal

process by which a person may claim that a proposed action is inconsistent with the Delta Plan, as prescribed.

The bill would impose requirements on the Department of Water Resources in connection with the preparation of a specified Bay Delta Conservation Plan (BDCP). The BDCP would only be permitted to be incorporated in the Delta Plan if certain requirements are met.

The bill would establish the Delta Independent Science Board, whose members would be 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 State Water Resources Control Board to establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010. The bill would require the board to develop new instream flow criteria for the Delta ecosystem, as specified. The board would be required to submit those determinations to the council. The bill would require the board, in consultation with the council, to appoint a special master for the Delta, referred to as the Delta Watermaster. The bill would grant specified authority to the Delta Watermaster.

(3) The California Bay-Delta Authority Act establishes the California Bay-Delta Authority in the Resources Agency. The act requires the authority and the implementing agencies to carry out programs, projects, and activities necessary to implement the Bay-Delta Program, defined to mean those projects, programs, commitments, and other actions that address the goals and objectives of the CALFED Bay-Delta Programmatic Record of Decision, dated August 28, 2000, or as it may be amended.

This bill would repeal that act. The bill would impose requirements on the council in connection with the repeal of that act.

(4) These provisions would only become operative if SB 229, SB 458, AB 39, and AB 49 of the 2009-10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.

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

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6103.1 of the Government Code is amended to read:

6103.1. Section 6103 does not apply to any fee or charge for official services required by ~~Parts~~ *Part 1 (commencing with Section 1000), Part* 2 (commencing with Section 1200) *, Part* 3 (commencing with Section 2000), ~~and~~ *Part* 4 (commencing with Section 4000) *, Part 5 (commencing with Section 4999), or Part 5.1 (commencing with Section 5100)* of Division 2 *, Division 7 (commencing with Section 13000), or Division 35 (commencing with Section 85000)* of the Water Code.

SEC. 2. Section 6103.4 of the Government Code is amended to read:

6103.4. Section 6103 does not apply to any fee or charge for official services required by Section 100860 of the Health and Safety Code ~~, or Part 5 (commencing with Section 4999) of Division 2, or Division 7 (commencing with Section 13000), of the Water Code~~ .

SEC. 3. Section 1120 of the Water Code is amended to read:

1120. This chapter applies to any decision or order issued under this part or Section 275, Part 2 (commencing with Section 1200), Part 2 (commencing with Section 10500) of Division 6, Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, *Section 85230,* or the public trust doctrine.

SEC. 4. Division 26.4 (commencing with Section 79400) of the Water Code is repealed.

SEC. 5. Division 35 (commencing with Section 85000) is added to the Water Code , to read:

DIVISION 35. Sacramento-San Joaquin Delta Reform Act of 2009

PART 1. General Provisions

CHAPTER 1. SHORT TITLE AND LEGISLATIVE FINDINGS

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

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

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

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

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

85002. The Legislature finds and declares that the Sacramento-San Joaquin Delta, referred to as "the Delta" in this division, is a critically important natural resource for California and the nation.

It serves Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America.

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

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

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

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

CHAPTER 2. DELTA POLICY

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

(a) Manage the Delta's water and environmental resources and the water resources of the state over the long-term.

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

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

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

(e) Achieve water quality objectives in the Delta.

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

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

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

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

85022. (a) It is the intent of the Legislature that state and

local land use actions be consistent with the Delta Plan. This section's findings, policies, and goals apply to Delta land-use planning and development.

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 3. MISCELLANEOUS PROVISIONS

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

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

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

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

(c) The Fish and Game Code.

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

(e) The application of the public trust doctrine.

(f) Any water right.

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

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

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

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

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

(c) The council shall have possession and control of all records, papers, equipment, supplies, contracts, leases, agreements, and other property, real or personal, connected with the administration of Division 26.4 (commencing with Section 79400), as that division read on December 31, 2009, or held for the benefit or use of the California Bay-Delta Authority.

(d) The council shall assume from the California Bay-Delta Authority all responsibility to manage the science program element that was required to be undertaken by Division 26.4 (commencing with Section 79400), as that division read on December 31, 2009.

CHAPTER 4. DEFINITIONS

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.

85052. "Adaptive management" means a framework and flexible decisionmaking process for ongoing knowledge acquisition, monitoring, and evaluation leading to continuous improvement in management planning and implementation of a project to achieve specified objectives.

85053. "Bay Delta Conservation Plan" or "BDCP" 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 complies with Section 10 of the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.) and accompanying regulations.

85054. "Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, 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.

85057.5. (a) "Covered action" means a plan, program, project, or activity that, in whole or in part:

(1) Will occur within the boundaries of the Delta or Suisun Marsh.

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

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

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

(b) "Covered action" does not include a regulatory action of a state agency.

85058. "Delta" means the Sacramento-San Joaquin Delta as defined in Section 12220, 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 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.

85064. "Public water agency" means a public entity, as defined in Section 514, that provides water service, as defined in Section 515.

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

85067. "Strategic Plan" means both the "Delta Vision Strategic Plan" issued by the Delta Vision Blue Ribbon Task Force on October 17, 2008, and the "Delta Vision Implementation Report" adopted by the Delta Vision Committee and dated December 31, 2008.

PART 2. Early Actions

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

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

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

85084.5. The Department of Fish and Game, in consultation with the United States Fish and Wildlife Service and the National Marine Fisheries Service and based on the best available science, shall develop and recommend to the board Delta flow criteria and

quantifiable biological objectives for aquatic and terrestrial species of concern dependent on the Delta. The recommendations shall be developed no later than 12 months after the date of enactment of this division.

85085. The department shall do all of the following:

(a) Assist the United States Bureau of Reclamation in implementation of a study of the Middle River Corridor Two-Barrier pilot project.

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

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

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

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

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

(c) (1) Pursuant to its public trust obligations, the board shall develop new flow criteria for the Delta ecosystem necessary to protect public trust resources. In carrying out this section, the board shall review existing water quality objectives and use the best available scientific information. The flow criteria for the Delta ecosystem shall include the volume, quality, and timing of water necessary for the Delta ecosystem under different conditions. The flow criteria shall be developed in a public process by the board within nine months of the enactment of this division. The flow criteria shall not be considered predecisional with regard to any subsequent board consideration of a permit, including any permit in connection with a final BDCP.

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

(3) Nothing in this section limits the board's authority in any proceeding to review the water rights of a person who diverts water in the Delta watershed, or to incorporate terms and conditions in that persons' water rights to contribute to the implementation of the flow criteria.

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

(d) The board shall enter into an agreement with the State Water Project contractors and the federal Central Valley Project contractors, who rely on water exported from the Sacramento River watershed, or a joint powers authority comprised of those contractors, for reimbursement of the costs of the analysis conducted

pursuant to this section.

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

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

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

PART 3. DELTA GOVERNANCE

CHAPTER 1. DELTA STEWARDSHIP COUNCIL

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

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

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

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

(c) The Governor, upon his or her appointment of members pursuant to subdivision (b), shall designate the appointees as serving initial terms of either one or two years. One class shall have three members and the other two classes shall have two members each. For the class that has three members, the terms of office shall be one year. The second class, composed of two members, shall serve two years. The third class, composed of two members, one each appointed by the Senate Committee on Rules and the Speaker of the Assembly, by July 1, 2010, shall serve four years. Thereafter, the terms of all succeeding members shall be four years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

85210. The council has all of the following powers:

(a) To sue or be sued.

(b) To enter into contracts.

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

(d) To delegate administrative functions to council staff.

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

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

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

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

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

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

(k) To hold hearings in all parts of the state necessary to carry out the powers vested in it, and for those purposes has the powers conferred upon the heads of state departments pursuant to Article 2

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

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

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

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

85212. (a) The council shall adopt a consultation process for the purposes of this division with all state agencies, departments, boards, and commissions that have specified responsibilities to develop, implement, monitor, and adhere to all or part of the Delta Plan. The council shall ensure, to the maximum extent practicable, that the actions of these entities are consistent with the Delta Plan. Pursuant to this subdivision, the council may initiate consultation when an action by a state agency is contrary to the Delta Plan.

(b) Any affected person may seek review by the council of an actual or proposed action of a state agency to determine whether that action is consistent with the Delta Plan. The council shall establish guidelines to implement this subdivision.

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

CHAPTER 3. CONSISTENCY OF STATE AND LOCAL PUBLIC AGENCY ACTIONS

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

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

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

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

(c) The council, or by delegation the executive director, may

dismiss the appeal for failure of the appellant to provide information requested by the council within the period provided, if the information requested is in the possession or under the control of the appellant.

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

85225.20. The appeal shall be heard by the council within 60 days of the date of the filing of the appeal, unless the council, or by delegation the executive director, determines that the issue raised on appeal is not within the council jurisdiction or does not raise an appealable issue. The council shall make its decision on the appeal within 60 days of hearing the appeal.

85225.25. After a hearing on an appealed action, the council shall make specific findings either denying the appeal or remanding the matter to the state or local public agency for reconsideration of the covered action based on the findings of the council. Upon remand, the state or local public agency may determine not to proceed with the covered action or may modify the appealed action and resubmit the certification of consistency to the council. A proposed covered action appealed pursuant to these provisions and remanded to the state or local public agency shall not be implemented until the council has adopted written findings, based on substantial evidence in the record, that the covered action, as modified, is consistent with the Delta Plan.

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

CHAPTER 4. DELTA WATERMASTER

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

(b) The board shall adopt internal procedures delegating authority to the Delta Watermaster. The Delta Watermaster shall exercise the board's authority to provide timely monitoring and enforcement of board orders and permit terms and conditions. The Delta Watermaster's delegated authority shall include, but not be limited to, authority to require monitoring and reporting, authority for approvals delegated to an officer or employee of the board by the terms of a water right permit or license, authority to approve temporary urgency changes, and authority to issue a notice of proposed cease and desist order or administrative civil liability complaint.

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

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

CHAPTER 5. DELTA INDEPENDENT SCIENCE BOARD AND DELTA SCIENCE PROGRAM

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

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

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

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

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

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

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

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

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

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

(D) Have the capability to guide the application of an adaptive management process to resource management policy decision in the Delta.

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

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

(4) The mission of the Delta Science Program shall be to provide the best possible unbiased scientific information to inform water and environmental decisionmaking in the Delta. That mission shall be carried out through funding research, synthesizing and communicating scientific information to policymakers and decisionmakers, promoting independent scientific peer review, and coordinating with Delta agencies to promote science-based adaptive management. The Delta Science Program shall assist with development and periodic updates of the Delta Plan's adaptive management program.

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

SEC. 6. Chapter 2 (commencing with Section 85320) is added to Part 4 of Division 35 of the Water Code , to read:

CHAPTER 2. BAY DELTA CONSERVATION PLAN

85320. (a) The Bay Delta Conservation Plan (BDCP) shall be considered for inclusion in the Delta Plan based on the provisions of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

(e) If the Department of Fish and Game approves the BDCP as a natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code and determines that the BDCP meets the requirements of this section, and the BDCP has been approved as a habitat conservation plan pursuant to the federal Endangered Species Act (16 U.S.C.

Section 1531 et seq.), the council shall incorporate the BDCP into the Delta Plan. The Department of Fish and Game's determination that the BDCP has met the requirements of this section may be appealed to the council.

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

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

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

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

SEC. 7. The bill shall only become operative if SB 229, SB 458, AB 39, and AB 49 of the 2009-10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.

~~SECTION 1. It is the intent of the Legislature to enact legislation to establish the Sacramento-San Joaquin Delta Stewardship Council.~~

____ CORRECTIONS Heading--Amended date.

____

EXHIBIT 4

BILL NUMBER: SBX7 1 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Steinberg

OCTOBER 23, 2009

An act to amend Sections 6103.1 and 6103.4 of the Government Code, to amend Sections 29702, 29725, 29727, 29733, 29735, 29735.1, 29738, 29741, 29751, 29752, 29754, 29756.5, 29763, 29771, and 29780 of, to add Sections 29703.5, 29722.5, 29722.7, 29728.5, 29759, 29773, 29773.5, and 29778.5 to, to add Division 22.3 (commencing with Section 32300) to, to repeal Section 29762 of, and to repeal and add Sections 29736, 29739, 29753, 29761, 29761.5, and 29764 of, the Public Resources Code, to amend Sections 375, 1052, 1055, 1055.2, 1120, 1525, 1535, 1538, 1551, 1825, 1845, 2525, 2526, 2550, 2763.5, 5100, 5101, 5103, 5106, and 5107 of, to amend and repeal Section 10631.5 of, to add Sections 1051.1, 1240.5, 1846, and 1847 to, to add Chapter 2.7 (commencing with Section 348) to Division 1 of, to add Part 2.55 (commencing with Section 10608) and Part 2.11 (commencing with Section 10920) to Division 6 of, to add Division 35 (commencing with Section 85000) to, to repeal Section 5108 of, to repeal Division 26.4 (commencing with Section 79400) of, to repeal and add Section 12924 of, and to repeal and add Part 2.8 (commencing with Section 10800) of Division 6 of, the Water Code, and to amend and supplement the Budget Act of 2009 (Chapter 1 of the 2009-10 Third Extraordinary Session) by amending Items 3940-001-0439 and 3940-001-3058 of Section 2.00 of the Budget Act of 2009, relating to public resources, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1, as introduced, Steinberg. Public resources.

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

This bill would revise and recast the provisions of the Delta Protection Act to, among other things, reduce the number of commission members from 23 to 15 members, as specified. The bill would require the commission to appoint at least one advisory committee consisting of representatives from specified entities to provide input regarding the diverse interests within the Delta. The bill would require the commission to adopt, not later than July 1, 2011, an economic sustainability plan containing specified elements and would require the commission to review and, as determined to be necessary, amend the plan every 5 years.

The bill would require the commission to prepare and submit to the Legislature, by July 1, 2010, recommendations on the potential expansion of or change to the primary zone or the Delta.

The bill would establish the Delta Investment Fund in the State Treasury. Moneys in the fund, upon appropriation by the Legislature,

would be required to be expended by the commission to implement the regional economic sustainability plan.

The bill would establish in the Natural Resources Agency the Sacramento-San Joaquin Delta Conservancy. The conservancy would be required to act as a primary state agency to implement ecosystem restoration in the Delta and to support efforts that advance environmental protection and the economic well-being of Delta residents. The bill would specify the composition of the conservancy and grant certain authority to the conservancy, including the authority to acquire real property interests from willing sellers or transferors. The conservancy would be required to use conservation easements to accomplish ecosystem restoration whenever feasible. The conservancy would be required to prepare and adopt a strategic plan to achieve the goals of the conservancy. The strategic plan would be required to be consistent with certain plans. The bill would establish the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury. Moneys in the fund would be available, upon appropriation, to finance projects, including ecosystem restoration and economic sustainability projects.

(2) Existing law requires the Secretary of the Natural Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill would enact the Sacramento-San Joaquin Delta Reform Act of 2009. The bill would establish the Delta Stewardship Council as an independent agency of the state. The council would be required to consist of 7 members appointed in a specified manner. The bill would specify the powers of the council. The bill would require the council, on or before January 1, 2012, to develop, adopt, and commence implementation of a comprehensive management plan for the Delta (Delta Plan), meeting specified requirements. The bill would require a state or local public agency that proposes to undertake certain proposed actions that will occur within the boundaries of the Delta or the Suisun Marsh to prepare, and submit to the council, a specified written certification of consistency with the Delta Plan prior to taking those actions. By imposing these requirements on a local public agency, the bill would impose a state-mandated local program. The bill would establish an appeal process by which a person may claim that a proposed action is inconsistent with the Delta Plan, as prescribed.

The bill would impose requirements on the Department of Water Resources in connection with the preparation of a specified Bay Delta Conservation Plan (BDCP). The BDCP would only be permitted to be incorporated in the Delta Plan if certain requirements are met.

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

The bill would require the State Water Resources Control Board to establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010. The bill would require the board to develop new flow criteria for the Delta ecosystem, as specified. The board would be required to submit those determinations to the council. The bill would require the board, in consultation with the council, to appoint a special master for the Delta, referred to as the Delta Watermaster. The bill would grant specified authority to the Delta Watermaster.

(3) The California Bay-Delta Authority Act establishes the California Bay-Delta Authority in the Resources Agency. The act

requires the authority and the implementing agencies to carry out programs, projects, and activities necessary to implement the Bay-Delta Program, defined to mean those projects, programs, commitments, and other actions that address the goals and objectives of the CALFED Bay-Delta Programmatic Record of Decision, dated August 28, 2000, or as it may be amended.

This bill would repeal that act. The bill would impose requirements on the council in connection with the repeal of that act.

(4) Existing law requires the Department of Water Resources to convene an independent technical panel to provide information to the department and the Legislature on new demand management measures, technologies, and approaches. "Demand management measures" means those water conservation measures, programs, and incentives that prevent the waste of water and promote the reasonable and efficient use and reuse of available supplies.

This bill would require the state to achieve a 20% reduction in urban per capita water use in California by December 31, 2020. The state would be required to make incremental progress towards this goal by reducing per capita water use by at least 10% on or before December 31, 2015. The bill would require each urban retail water supplier to develop urban water use targets and an interim urban water use target, in accordance with specified requirements. The bill would require agricultural water suppliers to implement efficient water management practices. The bill would require the department, in consultation with other state agencies, to develop a single standardized water use reporting form. The bill, with certain exceptions, would provide that urban retail water suppliers, on and after July 1, 2016, and agricultural water suppliers, on and after July 1, 2013, are not eligible for state water grants or loans unless they comply with the water conservation requirements established by the bill. The bill would repeal, on July 1, 2016, an existing requirement that conditions eligibility for certain water management grants or loans to an urban water supplier on the implementation of certain water demand management measures.

(5) Existing law, until January 1, 1993, and thereafter only as specified, requires certain agricultural water suppliers to prepare and adopt water management plans.

This bill would revise existing law relating to agricultural water management planning to require agricultural water suppliers to prepare and adopt agricultural water management plans with specified components on or before December 31, 2012, and update those plans on or before December 31, 2015, and on or before December 31 every 5 years thereafter. An agricultural water supplier that becomes an agricultural water supplier after December 31, 2012, would be required to prepare and adopt an agricultural water management plan within one year after becoming an agricultural water supplier. The agricultural water supplier would be required to notify each city or county within which the supplier provides water supplies with regard to the preparation or review of the plan. The bill would require the agricultural water supplier to submit copies of the plan to the department and other specified entities. The bill would provide that an agricultural water supplier is not eligible for state water grants or loans unless the supplier complies with the water management planning requirements established by the bill.

(6) Existing law generally prohibits the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, from being required to pay any fee for the performance of an official service. Existing law exempts from this provision any fee

or charge for official services required pursuant to specified provisions of law relating to water use or water quality.

This bill would expand the exemption to other provisions relating to water use, including provisions that require the payment of fees to the State Water Resources Control Board for official services relating to statements of water diversion and use.

(7) Existing law authorizes the State Water Resources Control Board to investigate all streams, stream systems, lakes, or other bodies of water, take testimony relating to the rights to water or the use of water, and ascertain whether water filed upon or attempted to be appropriated is appropriated under the laws of the state. Existing law requires the board to take appropriate actions to prevent waste or the unreasonable use of water. Under existing law, the board makes determinations with regard to the availability of recycled water.

This bill would authorize the board, in conducting an investigation or proceeding for these purposes, to order any person or entity that diverts water or uses water to submit, under penalty of perjury, any technical or monitoring report related to the diversion or use of water by that person or entity. By expanding the definition of the crime of perjury, the bill would impose a state-mandated local program. The bill would authorize the board, in connection with the investigation or proceeding, to inspect the facilities of any person or entity to determine compliance with specified water use requirements.

(8) Existing law authorizes the State Water Resources Control Board, upon the submission of a petition signed by a claimant to water of any stream system requesting a determination of rights among the claimants to that water, to enter an order granting the petition. After granting the petition, the board is required to investigate the stream system to gather information necessary to make a determination of the water rights of that stream system.

This bill would authorize the board to initiate a determination of rights under its own motion if after a hearing it finds that the public interest and necessity will be served by a determination of rights.

(9) Existing law declares that the diversion or use of water other than as authorized by specified provisions of law is a trespass. Existing law authorizes the administrative imposition of civil liability by the board for a trespass in an amount not to exceed $500 for each day in which the trespass occurs. Moneys generated by the imposition of civil liability under these provisions are deposited in the Water Rights Fund.

This bill would provide that a person or entity committing a trespass may be liable in an amount not to exceed the sum of $1,000 or $5,000 for each day in which the trespass occurs, as specified, or the highest market value of the water, whichever is the greater amount.

(10) Existing law, with certain exceptions, requires each person who diverts water after December 31, 1965, to file with the State Water Resources Control Board a prescribed statement of diversion and use. Existing law requires a statement to include specified information, including, on and after January 1, 2012, monthly records of water diversions. Under existing law, the monthly record requirement does not apply to a surface water diversion with a combined diversion capacity from a natural channel that is less than 50 cubic feet per second or to diverters using siphons in the tidal zone. Existing law subjects a person who makes a material misstatement in connection with the filing of the diversion and use statements to administratively imposed civil penalties in the amount

of $500 for each violation.

This bill would revise the types of water diversions for which the reporting requirement does not apply, including, among other diversions, a diversion that occurs before January 1, 2009, if certain requirements are met. The bill would delete exceptions to the monthly record requirement, and revise requirements relating to the contents of the statement of diversions and use.

The bill would subject a person to civil liability if that person fails to file, as required, a diversion and use statement for a diversion or use that occurs after January 1, 2009, tampers with any measuring device, or makes a material misstatement in connection with the filing of a diversion and use statement. The board would be authorized to impose the civil liability in accordance with a specified schedule.

The bill would authorize the board and the Department of Water Resources to adopt emergency regulations for the electronic filing of reports of water diversion or use that are required to be filed with those respective state agencies under specified statutory provisions.

The bill would establish a rebuttable presumption, in any proceeding before the board in which it is alleged that an appropriative right has ceased or is subject to prescribed action, that no use required to be included in a statement of diversion and use occurred unless that use is included in a statement that is submitted to the board within a specified time period.

The bill would require a person who files a statement of diversion and use, and certain petitions involving a change in a water right, to pay an annual fee, for deposit in the Water Rights Fund. The bill would include as recoverable costs, for which the board may be reimbursed from the fund upon appropriation therefor, costs incurred in connection with carrying out requirements relating to the statements of diversion and use and the performance of duties under the public trust doctrine and provisions that require the reasonable use of water.

(11) Existing law authorizes the State Water Resources Control Board to issue a cease and desist order against a person who is violating, or threatening to violate, certain requirements, including requirements set forth in a decision or order relating to the unauthorized use of water. Any person who violates a cease and desist order may be liable in an amount not to exceed $1,000 for each day in which the violation occurs. Revenue generated from these penalties is deposited in the Water Rights Fund.

This bill would increase, as specified, the civil penalties that apply to a person who violates a cease and desist order.

The bill would impose civil liability, in an amount not to exceed $500 for each day in which a violation occurs, for a failure to comply with various reporting or monitoring requirements, including requirements imposed pursuant to the public trust doctrine. The bill would authorize the board to impose additional civil liability, in an amount not to exceed $500 for each day in which a violation occurs, for the violation of a permit, license, certificate, or registration, or an order or regulation involving the unreasonable use of water. Funds derived from the imposition of these civil penalties would be deposited in the Water Rights Fund.

The bill would require that, in a proceeding before the board in which it is alleged that an appropriative water right has ceased, or is subject to prescribed action, there would be a rebuttable presumption that no use occurred on or after January 1, 2009, unless that diversion or use was reported to the board within 6 months after it is required to be filed with the board.

(12) Existing law authorizes a local agency whose service area includes a groundwater basin that is not subject to groundwater management to adopt and implement a groundwater management plan pursuant to certain provisions of law. Existing law requires a groundwater management plan to include certain components to qualify as a plan for the purposes of those provisions, including a provision that establishes funding requirements for the construction of certain groundwater projects.

This bill would establish a groundwater monitoring program pursuant to which specified entities, in accordance with prescribed procedures, may propose to be designated by the Department of Water Resources as groundwater monitoring entities, as defined, for the purposes of monitoring and reporting with regard to groundwater elevations in all or part of a basin or subbasin, as defined. The bill would require the department to work cooperatively with each monitoring entity to determine the manner in which groundwater elevation information should be reported to the department. The bill would authorize the department to make recommendations for improving an existing monitoring program, and to require additional monitoring wells under certain circumstances. If the department makes a specified determination with regard to a basin or subbasin, the department would be required to notify the counties within which that basin or subbasin is located. Upon such notification, the counties would be required to take certain action related to groundwater monitoring, thereby imposing a state-mandated local program. Under certain circumstances, specified entities with authority to assume groundwater monitoring functions with regard to a basin or subbasin would not be eligible for a water grant or loan awarded or administered by the state, unless certain actions occur.

(13) Existing law requires the department to conduct an investigation of the state's groundwater basins and to report its findings to the Governor and the Legislature not later than January 1, 1980.

This bill would repeal that provision. The department would be required to conduct an investigation of the state's groundwater basins and to report its findings to the Governor and the Legislature not later than January 1, 2012, and every 5 years thereafter.

(14) Existing law, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, an initiative bond act approved by the voters at the November 7, 2006, statewide general election, authorizes the issuance of bonds in the amount of $5,388,000,000, of which $1,000,000,000 is made available to the Department of Water Resources, upon appropriation therefor, to meet the long term water needs of the state. Eligible projects are required to implement integrated regional water management plans and include fisheries restoration and protection projects. A portion of these funds may be expended directly or granted by the department to address multiregional needs or issues of statewide significance.

This bill would appropriate $28,000,000 of these funds to the department for the department to expend, as specified, on the Two-Gates Fish Protection Demonstration Program managed by the United States Bureau of Reclamation. The bill would make a statement of legislative intent to finance the activities of the Delta Stewardship Council and the Sacramento-San Joaquin Delta Conservancy from funds made available pursuant to the Disaster Preparedness and Flood Prevention Bond Act of 2006 and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Bond Act of 2006.

(15) The Budget Act of 2009 made appropriations for the support of

the State Water Resources Control Board for the 2009-10 fiscal year, with certain payments from the Water Rights Fund.

This bill would amend and supplement the Budget Act of 2009 by making an additional appropriation from the fund to support water rights enforcement. The bill would, commencing with the 2010-11 fiscal year, continuously appropriate $3,750,000 on an annual basis only from fee revenue in the fund to the board for the purpose of funding permanent water rights enforcement positions.

(16) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(16) The bill would take effect only if ____ of the 2009-10 Seventh Extraordinary Session of the Legislature is enacted and becomes operative.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6103.1 of the Government Code is amended to read:

6103.1. Section 6103 does not apply to any fee or charge for official services required by ~~Parts~~ *Part 1 (commencing with Section 1000), Part* 2 (commencing with Section 1200) *, Part* 3 (commencing with Section 2000), ~~and~~ *Part* 4 (commencing with Section 4000) *, Part 5 (commencing with Section 4999), or Part 5.1 (commencing with Section 5100),* of Division 2 *, Division 7 (commencing with Section 13000), or Division 35 (commencing with Section 85000)* of the Water Code.

SEC. 2. Section 6103.4 of the Government Code is amended to read:

6103.4. Section 6103 does not apply to any fee or charge for official services required by Section 100860 of the Health and Safety Code ~~, or Part 5 (commencing with Section 4999) of Division 2, or Division 7 (commencing with Section 13000), of the Water Code~~ .

SEC. 3. Section 29702 of the Public Resources Code is amended to read:

29702. The Legislature further finds and declares that the basic goals of the state for the ~~delta~~ *Delta* are the following:

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

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

~~(b) Assure~~

(c) *Ensure* orderly, balanced conservation and development of ~~delta~~ *Delta* land resources.

~~(c)~~

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

SEC. 4. Section 29703.5 is added to the Public Resources Code, to read:

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

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

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

SEC. 5. Section 29722.5 is added to the Public Resources Code, to read:

29722.5. "Delta Plan" means the plan adopted by the Delta Stewardship Council pursuant to Section 85300 of the Water Code.

SEC. 6. Section 29722.7 is added to the Public Resources Code, to read:

29722.7. "Economic sustainability plan" means the plan adopted by the commission pursuant to Section 29759.

SEC. 7. Section 29725 of the Public Resources Code is amended to read:

29725. "Local government" means the Counties of Contra Costa, Sacramento, San Joaquin, Solano, and Yolo, and the Cities of Sacramento, Stockton, Tracy, Antioch, Pittsburg, Isleton, Lathrop, Brentwood, ~~Rio Vista,~~ West Sacramento, and Oakley, and any other cities that may be incorporated in the future in the primary zone.

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

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

SEC. 9. Section 29728.5 is added to the Public Resources Code, to read:

29728.5. "Resources management plan" means the plan adopted by the commission pursuant to Section 29760.

SEC. 10. Section 29733 of the Public Resources Code is amended to read:

29733. "Unincorporated towns" means the communities of Walnut Grove, Clarksburg, Courtland, Hood, Locke, *Knightsen, Collinsville,* and Ryde.

SEC. 11. Section 29735 of the Public Resources Code is amended to read:

29735. There is hereby created the Delta Protection Commission consisting of ~~23~~ *15* members as follows:

(a) One member of the board of supervisors, or his or her

designee, of each of the five counties within the ~~delta~~ *Delta* whose supervisorial district is within the primary zone shall be appointed by the board of supervisors of ~~the county~~ *each of those respective counties* .

(b) (1) Three elected city council members shall be selected and appointed by city selection committees, from ~~regional and area councils of government~~ *the appropriate regions specified below* , one in each of the following areas:

(A) One from the north ~~delta~~ *Delta* , ~~consisting of~~ *from either* the ~~Counties~~ *County* of Yolo ~~and~~ *or the County of* Sacramento.

(B) One from the south ~~delta~~ *Delta* , consisting of the County of San Joaquin.

(C) One from the west ~~delta~~ *Delta* , ~~consisting of~~ *from either* the ~~Counties~~ *County* of Contra Costa ~~and~~ *or the County of* Solano *, on a rotating basis* .

(2) A city council member *appointed pursuant to this subdivision* may select a designee for purposes of paragraph (1).

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

(c) ~~(1)~~ – One member each from the board of directors of ~~five~~ *three* different reclamation districts that are located within the primary zone who are residents of the ~~delta~~ *Delta* , and who are elected by the trustees of ~~reclamations~~ *reclamation* districts ~~within the following areas:~~ *pursuant to paragraphs (1), (2), and (3). Each reclamation district may nominate one director to be a member. The member from an area described in paragraph (1), (2), or (3) shall be selected from among the nominees by a majority vote of the reclamation districts in that area. A member selected pursuant to this subdivision may select a designee for this purpose. For the purposes of this section, each reclamation district shall have one vote. Reclamation district members shall consist of the following:*

~~(A) Two members~~

(1) One member from the area of the North Delta Water Agency as described in Section 9.1 of the North Delta Water Agency Act (Chapter 283 of the Statutes of 1973) ~~, provided at least one member is also a member of the Delta Citizens Municipal Advisory Council~~ .

~~(B)~~

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

~~(C) One member from the area of the Central Delta Water Agency as described in Section 9.1 of the Central Delta Water Agency Act (Chapter 1133 of the Statutes of 1973).~~

~~(D)~~

(3) One member from the area of the South Delta Water Agency as described in Section 9.1 of the South Delta Water Agency

Act (Chapter 1089 of the Statutes of 1973).

~~(2) Each reclamation district may nominate one director to be a member. The member from an area shall be selected from among the nominees by a majority vote of the reclamation districts in that area. The member may select a designee for this purpose. For purposes of this section, each reclamation district shall have one vote. The north delta area shall conduct separate votes to select each of its two members.~~

~~(d) The Director of Parks and Recreation, or the director's sole designee.~~

~~(e) The Director of Fish and Game, or the director's sole designee.~~

~~(f)~~

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

~~(g)~~

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

~~(h) The Director of Boating and Waterways, or the director's sole designee.~~

~~(i) The Director of Water Resources, or the director's sole designee.~~

~~(j) The public member of the California Bay-Delta Authority who represents the delta region or his or her designee.~~

~~(k) (1) The Governor shall appoint three members and three alternates from the general public who are delta residents or delta landowners, as follows:~~

~~(A) One member and one alternate shall represent the interests of production agriculture with a background in promoting the agricultural viability of delta farming.~~

~~(B) One member and one alternate shall represent the interests of conservation of wildlife and habitat resources of the delta region and ecosystem.~~

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

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

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

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

SEC. 12. Section 29735.1 of the Public Resources Code is amended to read:

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

(b) The alternate shall serve at the pleasure of the member who appoints him or her and shall have all of the powers and duties of a member of the commission, except that the alternate shall only participate and vote in a meeting in the absence of the member who appoints him or her. All provisions of law relating to conflicts of interest that are applicable to a member shall apply to an alternate. ~~Whenever~~ *If* a member has, or is known to have, a conflict of interest on any matter, the member's alternate

is ineligible to vote on that matter.

SEC. 13. Section 29736 of the Public Resources Code is repealed.

~~29736. The term of office of the members of the commission shall be for four years, and a member may serve for one or more consecutive terms.~~

SEC. 14. Section 29736 is added to the Public Resources Code, to read:

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

SEC. 15. Section 29738 of the Public Resources Code is amended to read:

29738. The ~~position~~ *office* of ~~a~~ *an appointed* member of the commission ~~shall be considered~~ *is* vacated upon the loss of any qualification required for appointment, and in that event the appointing authority shall appoint a successor within 30 days of the occurrence of the vacancy. ~~Upon the occurrence of the first vacancy among any of the members listed in subdivision (d), (e), (f), (g), (h), or (i) of Section 29735, the Director of Conservation or the director's designee shall serve as the successor member.~~

SEC. 16. Section 29739 of the Public Resources Code is repealed.

~~29739. The commission shall elect from its own members a chairperson and vice chairperson whose terms of office shall be two years, and who may be reelected. If a vacancy occurs in either office, the commission shall fill the vacancy for the unexpired term.~~

SEC. 17. Section 29739 is added to the Public Resources Code, to read:

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

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

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

SEC. 18. Section 29741 of the Public Resources Code is amended to read:

29741. The time and place of the first meeting of the commission *, on and after January 1, 2010,* shall be prescribed by the Governor, but in no event shall it be scheduled for a date later than January 31, ~~1993~~ *2010* . All meetings after the first meeting shall be held in a city within the ~~delta~~ *Delta* .

SEC. 19. Section 29751 of the Public Resources Code is amended to read:

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

SEC. 20. Section 29752 of the Public Resources Code is amended to read:

29752. The commission shall adopt its own rules, regulations, and procedures necessary for its organization and operation *, and*

shall conduct its meetings in compliance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) .

SEC. 21. Section 29753 of the Public Resources Code is repealed.

~~29753. The commission shall appoint agricultural, environmental, and recreational advisory committees for the purpose of providing the commission with timely comments, advice, and information. The commission may appoint committees from its membership or may appoint additional advisory committees from members of other interested public agencies and private groups. The commission shall seek advice and recommendations from advisory committees appointed by local government which are involved in subject matters affecting the delta.~~

SEC. 22. Section 29753 is added to the Public Resources Code, to read:

29753. (a) The commission shall appoint at least one advisory committee to provide recommendations regarding the diverse interests within the Delta. At a minimum, the advisory committees shall include representatives of state agencies and other stakeholders with interests in the Delta's ecosystem, water supply, and socioeconomic sustainability, including, but not limited to, its recreational, agricultural, flood control, environmental, and water resources, and state, local, and utility infrastructure. The commission shall encourage participation of various federal agencies, including the United States Bureau of Reclamation, the United States Fish and Wildlife Service, the United States Army Corps of Engineers, and others as appropriate.

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

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

SEC. 23. Section 29754 of the Public Resources Code is amended to read:

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

SEC. 24. Section 29756.5 of the Public Resources Code is amended to read:

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

SEC. 25. Section 29759 is added to the Public Resources Code, to read:

29759. (a) Not later than July 1, 2011, the commission shall prepare and adopt, by a majority vote of the membership of the commission, an economic sustainability plan. The economic sustainability plan shall include information and recommendations that inform the Delta Stewardship Council's policies regarding the

socioeconomic sustainability of the Delta region.

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

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

(2) The economic goals, policies, and objectives in local general plans and other local economic efforts, including recommendations on continued socioeconomic sustainability of agriculture and its infrastructure and legacy communities in the Delta.

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

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

SEC. 26. Section 29761 of the Public Resources Code is repealed.

~~29761. The Director of the Office of Planning and Research shall submit comments and recommendations on the resource management plan for the commission's consideration, prior to the plan's adoption.~~

SEC. 27. Section 29761 is added to the Public Resources Code, to read:

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

SEC. 28. Section 29761.5 of the Public Resources Code is repealed.

~~29761.5. Not later than January 7, 1995, the commission shall transmit copies of the resource management plan to the Governor. Copies of the resource management plan shall be made available, upon request, to Members of the Legislature.~~

SEC. 29. Section 29761.5 is added to the Public Resources Code, to read:

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

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

SEC. 30. Section 29762 of the Public Resources Code is repealed.

~~29762. The commission shall adopt, by a majority vote of the membership of the commission, the resource management plan after at least three public hearings, with at least one hearing held in a city in the north delta, the south delta, and the west delta.~~

SEC. 31. Section 29763 of the Public Resources Code is amended to read:

29763. Within 180 days from the date of the adoption of the ~~resource~~ *resources* management plan or any amendments, changes, or updates, to the ~~resource~~ *resources* management plan by the commission, ~~all~~ *each* local ~~governments~~

government shall submit to the commission proposed amendments ~~that will cause their general plans to be~~ *to its general plan that are intended to make the general plan* consistent with the ~~criteria in Section 29763.5~~ *resources management plan* with respect to land located within the primary zone.

SEC. 32. Section 29764 of the Public Resources Code is repealed.

~~29764. This division does not confer any permitting authority upon the commission or require any local government to conform their general plan, or land use entitlement decisions, to the resource management plan, except with regard to lands within the primary zone. The resource management plan does not preempt local government general plans for lands within the secondary zone.~~

SEC. 33. Section 29764 is added to the Public Resources Code, to read:

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

SEC. 34. Section 29771 of the Public Resources Code is amended to read:

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

SEC. 35. Section 29773 is added to the Public Resources Code, to read:

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

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

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

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

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

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

SEC. 36. Section 29773.5 is added to the Public Resources Code, to read:

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

(a) Rio Vista.

(b) Isleton.

(c) Bethel Island.

(d) Brannan-Andrus Island.

(e) Cosumnes/Mokelumne floodway.

(f) The San Joaquin/South Delta lowlands.

SEC. 37. Section 29778.5 is added to the Public Resources Code, to read:

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

SEC. 38. Section 29780 of the Public Resources Code is amended to read:

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

~~(a) An evaluation of the effectiveness of the resource management plan in preserving agricultural lands, restoring delta habitat, improving levee protection and water quality, providing increased public access and recreational opportunities, and in undertaking other functions prescribed in this division.~~

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

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

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

(3) Outcomes of reviews initiated by the commission.

(4) Facilitating regional economic sustainability.

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

(b) An update of the ~~resource management~~ *economic sustainability* plan, using baseline conditions set forth in the original ~~resource management~~ *economic sustainability* plan.

SEC. 39. Division 22.3 (commencing with Section 32300) is added to the Public Resources Code, to read:

DIVISION 22.3. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY

CHAPTER 1. GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

(1) Protect and enhance habitat and habitat restoration.

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

(3) Provide increased opportunities for tourism and recreation.

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

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

(6) Protect and improve water quality.

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

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

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

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

(11) Facilitate take protection and safe harbor agreements under

the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) and the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code) for adjacent landowners and local public agencies.

(12) Promote environmental education.

CHAPTER 2. DEFINITIONS

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

(a) "Board" means the governing board of the Sacramento-San Joaquin Delta Conservancy.

(b) "Conservancy" means the Sacramento-San Joaquin Delta Conservancy.

(c) "Delta" means the Sacramento-San Joaquin Delta as defined in Section 12220 of the Water Code.

(d) "Fund" means the Sacramento-San Joaquin Delta Conservancy Fund created pursuant to Section 32360.

(e) "Local public agency" means a city, county, special district, or joint powers authority.

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

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

CHAPTER 3. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY

32320. There is in the Natural Resources Agency the Sacramento-San Joaquin Delta Conservancy, which is created as a state agency to work in collaboration and cooperation with local governments and interested parties.

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

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

(1) Protect and enhance habitat and habitat restoration.

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

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

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

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

(6) Protect and improve water quality.

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

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

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

(10) Assist local entities in the implementation of their habitat

conservation plans (HCPs) and natural community conservation plans (NCCPs).

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

(12) Promote environmental education through grant funding.

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

CHAPTER 4. GOVERNING BOARD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) One representative of the United States Army Corps of Engineers, designated by the Commanding Officer, United States Army

Corps of Engineers, South Pacific Division.

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

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

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

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

(9) A designee of the Yolo Basin Foundation.

(10) A designee of the Delta Protection Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32350. The board shall hold its regular meetings within the Delta

or the City of Rio Vista.

CHAPTER 5. POWERS, DUTIES, AND LIMITATIONS

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

(b) (1) The Sacramento-San Joaquin Delta Conservancy Fund is hereby created in the State Treasury. Moneys in the fund shall be available, upon appropriation by the Legislature, only for the purposes of this division.

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

(3) Funds may be allocated to a separate program for economic sustainability in the Delta. The conservancy shall develop this program, in conjunction with the Delta Protection Commission, the Delta counties, and other interested parties. Funds provided to the conservancy to implement ecosystem restoration projects pursuant to the Bay Delta Conservation Plan shall only be used for ecosystem restoration purposes.

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

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

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

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

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

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

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

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

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

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

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

(d) The conservancy may seek repayment or reimbursement of funds granted on terms and conditions it deems appropriate. The proceeds of

repayment shall be deposited in the fund.

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

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

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

(1) The intended use of the property.

(2) The manner in which the land will be managed.

(3) How the cost of ongoing operations, maintenance, and management will be provided, including an analysis of the maintaining entity's financial capacity to support those ongoing costs.

(4) Grantees shall demonstrate, where applicable, how they will provide payments in lieu of taxes, assessments, or charges otherwise due to local government.

32365. The conservancy may sue and be sued.

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

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

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

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

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

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

(c) The conservancy may create and manage endowments.

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

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

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

(b) The conservancy may provide and make available technical

information, expertise, and other nonfinancial assistance to public agencies, nonprofit organizations, and tribal organizations, to support program and project development and implementation.

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

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

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

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

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

SEC. 40. Chapter 2.7 (commencing with Section 348) is added to Division 1 of the Water Code, to read:

CHAPTER 2.7. WATER DIVERSION AND USE REPORTS

348. (a) The department or the board may adopt emergency regulations providing for the electronic filing of reports of water diversion or use required to be filed with the department or board under this code, including, but not limited to, any report required to be filed under Part 5.1 (commencing with Section 5100) of Division 2 and any report required to be filed by a water right permittee or licensee.

(b) Emergency regulations adopted pursuant to this section, or any amendments thereto, shall be adopted by the department or the board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations or amendments to those regulations adopted under this section shall remain in effect until revised by the department or the board that adopted the regulations or amendments.

SEC. 40.5. Section 375 of the Water Code is amended to read:

375. (a) Notwithstanding any other provision of the law, any public entity which supplies water at retail or wholesale for the benefit of persons within the service area or area of jurisdiction of the public entity may, by ordinance or resolution adopted by a majority of the members of the governing body after holding a public hearing upon notice and making appropriate findings of necessity for the adoption of a water conservation program, adopt and enforce a water conservation program to reduce the quantity of water used by those persons for the purpose of conserving the water supplies of the public entity.

(b) With regard to water delivered for other than agricultural uses, the ordinance or resolution may specifically require the installation of water-saving devices ~~which~~ *that* are designed to reduce water consumption. The ordinance or resolution may also encourage water conservation through rate structure design.

(c) With regard to water delivered for "process water" users, as that term is defined in subdivision (l) of Section 10608.12, an ordinance or resolution adopted on or after January 1, 2010, shall be consistent with the requirements of paragraph (1) of subdivision (d) of Section 10608.26.

~~(c)~~

(d) For the purposes of this section, "public entity" means a city, whether general law or chartered, county, city and county, special district, agency, authority, any other municipal public corporation or district, or any other political subdivision of the state.

SEC. 41. Section 1051.1 is added to the Water Code, to read:

1051.1. (a) In conducting any investigation or proceeding specified in Section 275 or 1051, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, the board may order any person or entity that diverts or uses water to prepare, under penalty of perjury, and to submit to the board, any technical or monitoring program reports related to that person's or entity's diversion or use of water as the board may specify. The costs incurred by the person or entity in the preparation of those reports shall bear a reasonable relationship to the need for the report and the benefit to be obtained from the report. If the preparation of individual reports would result in a duplication of effort, or if the reports are necessary to evaluate the cumulative effect of several diversions or uses of water, the board may order any person or entity subject to this subdivision to pay a reasonable share of the cost of preparing reports.

(b) Any order issued under this section shall be served by personal service or registered mail on the party required to submit technical or monitoring program reports or to pay a share of the costs of preparing reports. Unless the board issues the order after a hearing, the order shall inform the party of the right to request a hearing within 30 days after the party has been served. If the party does not request a hearing within that 30-day period, the order shall take effect as issued. If the party requests a hearing within that 30-day period, the board may adopt a decision and order after conducting a hearing.

(c) Upon application of any person or entity or upon its own motion, the board may review and revise any order issued pursuant to this section, in accordance with the procedures set forth in subdivision (b).

(d) In conducting any investigation or proceeding specified in Section 275 or 1051, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, the board may inspect the facilities of any person or entity to ascertain whether the purposes of Section 100 and this division are being met and to ascertain compliance with any permit, license, certification, registration, decision, order, or regulation issued under Section 275, this division, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7. Except in the event of an emergency affecting the public health or safety, the inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure.

SEC. 42. Section 1052 of the Water Code is amended to read:

1052. (a) The diversion or use of water subject to this division other than as authorized in this division is a trespass.

~~(b) Civil liability may be administratively imposed by the board pursuant to Section 1055 for a trespass as defined in this section in an amount not to exceed five hundred dollars ($500) for each day in which the trespass occurs.~~

~~(c)~~

(b) The Attorney General, upon request of the board, shall institute in the superior court in and for any county ~~wherein~~ *in which* the diversion or use is threatened, is occurring, or has occurred ~~appropriate~~

an action for the issuance of injunctive relief as may be warranted by way of temporary restraining order, preliminary injunction, or permanent injunction.

~~(d)~~

(c) *(1)* Any person or entity committing a trespass as defined in this section may be liable ~~for a sum~~ *in an amount* not to exceed ~~five hundred dollars ($500) for each day in which the trespass occurs. The~~ *the greater of either of the following amounts:*

(A) One thousand dollars ($1,000) for each day in which the trespass occurs for the first enforcement proceeding or five thousand dollars ($5,000) for each day in which the trespass occurs for any subsequent enforcement proceeding.

(B) The highest market value of the water subject to the trespass.

(2) Civil liability may be imposed by the superior court for no more than three years preceding the filing of the complaint.

(3) *The* Attorney General, upon request of the board, shall petition the superior court to impose, assess, and recover any sums pursuant to this subdivision. In determining the appropriate amount, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(4) Civil liability may be imposed by the board pursuant to Section 1055.

~~(e)~~

(d) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

~~(f)~~

(e) The remedies prescribed in this section are cumulative and not alternative.

SEC. 43. Section 1055 of the Water Code is amended to read:

1055. (a) The executive director of the board may issue a complaint to any person or entity on which administrative civil liability may be imposed pursuant to Section 1052, ~~Section 1536, Section 1845,~~ *Article 4 (commencing with Section 1845) of Chapter 12 of Part 2 of Division 2,* or Section 5107. The complaint shall allege the act or failure to act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

(b) The complaint shall be served by personal notice or certified mail, and shall inform the party served that the party may request a hearing not later than 20 days from the date the party was served. The hearing shall be before *the board, or* a member of the board ~~as it may specify~~ *in accordance with Section 183* .

~~(c) After any hearing, the member shall report a proposed decision and order to the board and shall supply a copy to the party served with the complaint, the board's executive director, and any other person requesting a copy. The member of the board acting as hearing officer may sit as a member of the board in deciding the matter. The board, after making an independent review of the record and taking any additional evidence as may be necessary that could not reasonably have been offered before the hearing officer, may adopt, with or without revision, the proposed decision and order.~~

(c) The board may adopt an order setting administrative civil

liability, or determining that no liability will be imposed, after any necessary hearing.

(d) Orders setting administrative civil liability shall become effective and final upon issuance thereof and payment shall be made.

SEC. 44. Section 1055.2 of the Water Code is amended to read:

1055.2. No person or entity shall be subject to both civil liability imposed under Section 1055 and civil liability imposed by the superior court under ~~subdivision (d) of~~ Section 1052, ~~Section 1536, or Section~~ 1845 *, or 1846* for the same act or failure to act.

SEC. 45. Section 1120 of the Water Code is amended to read:

1120. This chapter applies to any decision or order issued under this part or Section 275, Part 2 (commencing with Section 1200), Part 2 (commencing with Section 10500) of Division 6, Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, *Section 85230,* or the public trust doctrine.

SEC. 46. Section 1240.5 is added to the Water Code, to read:

1240.5. In any proceeding before the board in which it is alleged that a right to appropriate water has ceased or is subject to forfeiture or revocation for nonuse, there shall be a rebuttable presumption that no use occurred unless that use is included in a statement submitted pursuant to any reporting or monitoring requirement established under any permit, license, certificate, registration, decision or order, or regulation issued by the board pursuant to this division, Section 275, Article 7 (commencing with Section 13550) of Division 7, or the public trust doctrine under this part, and the statement is submitted within six months after it is required to be filed with the board. This section does not apply to any diversion or use that occurred before January 1, 2009.

SEC. 47. Section 1525 of the Water Code is amended to read:

1525. (a) Each person or entity who holds a permit or license to appropriate water, and each lessor of water leased under Chapter 1.5 (commencing with Section 1020) of Part 1, shall pay an annual fee according to a fee schedule established by the board.

(b) Each person or entity who files any of the following shall pay a fee according to a fee schedule established by the board:

(1) An application for a permit to appropriate water.

(2) A registration of appropriation for a small domestic use or livestock stockpond *use* .

(3) A petition for an extension of time within which to begin construction, to complete construction, or to apply the water to full beneficial use under a permit.

(4) A petition to change the point of diversion, place of use, or purpose of use, under a *registration for small domestic use or livestock stockpond use, or under a* permit or license.

(5) A petition to change the conditions of a permit or license, requested by the permittee or licensee, that is not otherwise subject to paragraph (3) or (4).

(6) A petition under Section 1707 or 1740 to change the point of diversion, place of use, or purpose of use of a water right that is not subject to a permit or license to appropriate water.

~~(6)~~

(7) A petition to change the point of discharge, place of use, or purpose of use, of treated wastewater, requested pursuant to Section 1211.

~~(7)~~

(8) An application for approval of a water lease agreement.

~~(8)~~

(9) A request for release from priority pursuant to Section 10504.

~~(9)~~

(10) An application for an assignment of a state-filed application pursuant to Section 10504.

(11) A statement of water diversion and use pursuant to Part 5.1 (commencing with Section 5100).

(c) The board shall set the fee schedule authorized by this section so that the total amount of fees collected pursuant to this section equals that amount necessary to recover costs incurred in connection with the issuance, administration, review, monitoring, and enforcement of permits, licenses, certificates, and registrations to appropriate water, water leases, *statements of diversion and use,* and orders approving changes in point of discharge, place of use, or purpose of use of treated wastewater. The board may include, as recoverable costs, but is not limited to including, the costs incurred in reviewing applications, registrations, *statements of diversion and use,* petitions and requests, prescribing terms of permits, licenses, registrations, and change orders, enforcing and evaluating compliance with permits, licenses, certificates, registrations, change orders, and water leases, inspection, monitoring, planning, modeling, reviewing documents prepared for the purpose of regulating the diversion and use of water, applying and enforcing *the public trust doctrine, Section 275,* the prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division, *the requirements under Part 5.1 (commencing with Section 5100) for filing statements of diversion and use,* and the administrative costs incurred in connection with carrying out these actions.

(d) (1) The board shall adopt the schedule of fees authorized under this section as emergency regulations in accordance with Section 1530.

(2) For filings subject to subdivision (b), the schedule may provide for a single filing fee or for an initial filing fee followed by an annual fee, as appropriate to the type of filing involved, and may include supplemental fees for filings that have already been made but have not yet been acted upon by the board at the time the schedule of fees takes effect.

(3) The board shall set the amount of total revenue collected each year through the fees authorized by this section at an amount equal to the revenue levels set forth in the annual Budget Act for this activity. The board shall review and revise the fees each fiscal year as necessary to conform with the revenue levels set forth in the annual Budget Act. If the board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the annual Budget Act, the board may further adjust the annual fees to compensate for the over or under collection of revenue.

(e) Annual fees imposed pursuant to this section for the 2003-04 fiscal year shall be assessed for the entire 2003-04 fiscal year.

SEC. 48. Section 1535 of the Water Code is amended to read:

1535. (a) Any fee subject to this chapter that is required in connection with the filing of an application, registration, request *, statement,* or proof of claim, other than an annual fee required after the period covered by the initial filing fee, shall be paid to the board.

(b) If a fee established under subdivision (b) of Section 1525, Section 1528, or Section 13160.1 is not paid when due, the board may cancel the application, registration, petition, request, *statement,* or claim, or may refer the matter to the State Board

of Equalization for collection of the unpaid fee.

SEC. 49. Section 1538 of the Water Code is amended to read:

1538. *(a)* In any proceeding pursuant to Section 1052 in which it is determined that there has been a violation of the prohibition against the unauthorized diversion or use of water subject to this division, the board or court, as the case may be, may impose an additional liability in the amount of *150 percent of* any annual fees that would have been required under this division if the diversion or use had been authorized by a permit or license to appropriate water.

(b) In any proceeding pursuant to Section 5107 in which the board imposes liability for a failure to file a statement of diversion and use or for a material misstatement in a statement of diversion and use, the board may impose an additional liability in the amount of 150 percent of any fees that have not been paid but would have been required under this division if the statement of diversion and use had been filed and did not make any material misstatement.

(c) The additional liability imposed under this section may include interest, at the rate provided under Section 685.010 of the Code of Civil Procedure, from the dates the annual fees would have been assessed.

SEC. 50. Section 1551 of the Water Code is amended to read:

1551. All of the following shall be deposited in the Water Rights Fund:

(a) All fees, expenses, and penalties collected by the board or the State Board of Equalization under this chapter and Part 3 (commencing with Section 2000).

(b) All funds collected under Section 1052, ~~1845 or~~ *Article 4 (commencing with Section 1845) of Chapter 12* , *and Section* 5107.

(c) All fees collected under Section 13160.1 in connection with certificates for activities involving hydroelectric power projects subject to licensing by the Federal Energy Regulatory Commission.

SEC. 51. Section 1825 of the Water Code is amended to read:

1825. It is the intent of the Legislature that the state should take vigorous action to enforce the terms and conditions of permits , licenses, certifications, and registrations to appropriate water, to enforce state board orders and decisions, ~~and~~ to prevent the unlawful diversion of water *, and to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion , of water, and to enforce reporting and monitoring requirements* .

SEC. 52. Section 1845 of the Water Code is amended to read:

1845. (a) Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.

(b) (1) Any person or entity who violates a cease and desist order issued pursuant to this chapter may be liable ~~for a sum~~ *in an amount* not to exceed ~~one thousand dollars ($1,000) for each day in which the violation occurs.~~ *the greater of either of the following amounts:*

(A) One thousand dollars ($1,000) for each day in which the violation occurs for the first enforcement proceeding or five thousand ($5,000) for each day in which the violation occurs for any

subsequent enforcement proceeding.

(B) The highest market value of the water.

(2) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums. *Civil liability may be imposed by the superior court for no more than three years pre ce ding the filing of the complaint.*

(3) Civil liability may be imposed administratively by the board pursuant to Section 1055.

(c) In determining the appropriate amount, the court, or the board, as the case may be, shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(d) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

SEC. 53. Section 1846 is added to the Water Code, to read:

1846. (a) Any person or entity subject to a monitoring or reporting requirement specified in subdivision (f) who violates that reporting or monitoring requirement, makes a material misstatement in any record or report submitted under that reporting or monitoring requirement, or tampers with or renders inaccurate any monitoring device required under that reporting or monitoring requirement shall be liable for a sum not to exceed five hundred dollars ($500) for each day in which the violation occurs.

(b) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.

(c) Civil liability may be imposed administratively by the board pursuant to Section 1055.

(d) In determining the appropriate amount, the court, or the board, as the case may be, shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(e) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

(f) (1) This section applies to any reporting or monitoring requirement established under any permit, license, certificate, registration, decision or order, or regulation issued by the board pursuant to this division, Section 275, Article 7 (commencing with Section 13550) of Division 7, or the public trust doctrine.

(2) This section also applies to any reporting or monitoring requirement established by the department under Section 275, if the department requests enforcement pursuant to this section.

(3) This section does not provide a basis for imposing liability on a watermaster who is subject to reporting or monitoring requirements but does not divert or use the water subject to those requirements.

SEC. 54. Section 1847 is added to the Water Code, to read:

1847. (a) Any person or entity who violates any term or condition of a permit, license, certificate, or registration issued under this division or any order or regulation adopted by the board under Section 275 may be liable in an amount not to exceed five hundred dollars ($500) for each day in which the violation occurs.

(b) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.

(c) Civil liability may be imposed administratively by the board pursuant to Section 1055.

(d) In determining the appropriate amount, the court, or the board, as the case may be, shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(e) No liability shall be recoverable under this section for any violation for which liability is recovered under Section 1052 or 1846.

(f) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

SEC. 55. Section 2525 of the Water Code is amended to read:

2525. Upon petition signed by one or more claimants to water of any stream system, requesting the determination of the rights of the various claimants to the water of that stream system, the board shall, if, upon investigation, it finds the facts and conditions are such that the public interest and necessity will be served by a determination of the water rights involved, enter an order granting the petition and make proper arrangements to proceed with the determination. *The board may initiate a determination of rights under its own motion if after a hearing it finds that the public interest and necessity will be served by a determination of the rights involved.*

SEC. 56. Section 2526 of the Water Code is amended to read:

2526. As soon as practicable after granting the petition *or motion* the board shall prepare and issue a notice setting forth the following:

(a) The facts of the entry of the order and of the pendency of the ~~proceedings;~~ *proceedings.*

(b) That all claimants to rights to the use of water of the stream system are required to inform the board within 60 days from the date of the notice, or such further time as the board may allow, of their intention to file proof of ~~claim;~~ *claim.*

(c) The date prior to which all claimants to rights to the water of the stream system shall notify the board in writing of their intention to file proof of claim and the address to which all subsequent notices to the claimant relating to the proceedings may be ~~sent;~~ *sent.*

(d) A statement that all claimants will be required to make proof of their claims at a time to be fixed by the board after the conclusion of its investigation.

SEC. 57. Section 2550 of the Water Code is amended to read:

2550. As soon as practicable after granting the petition *or motion* , the board shall begin an investigation of the stream system, of the diversion of water, of all beneficial uses being made of the water, and of the water supply available for those uses, and shall gather such other data and information as may be essential to the proper determination of the water rights in the stream system.

SEC. 58. Section 2763.5 of the Water Code is amended to read:

2763.5. (a) No exception to the order of determination shall be considered, except in the court's discretion for good cause shown, unless the matter of the exception was presented to the board in the form of an objection. Good cause includes, but is not limited to, the

existence of newly discovered relevant evidence which, in the exercise of reasonable diligence, could not have been presented to the board during the board's proceedings.

(b) This section does not apply to persons to whom the board did not mail either (1) written notice of the board meeting at which the petition *or motion* pursuant to Section 2525 is to be considered as an item of business, or (2) written notice of the pendency of the proceedings pursuant to Section 2526.

SEC. 59. Section 5100 of the Water Code is amended to read:

5100. As used in this part:

(a) "Best available technologies" means technologies at the highest technically practical level, using flow totaling devices, and if necessary, data loggers and telemetry.

(b) "Best professional practices" means practices attaining and maintaining the accuracy of measurement and reporting devices and methods.

(c) "Diversion" means taking water by gravity or pumping from a surface stream or subterranean stream flowing through a known and definite channel, or other body of surface water, into a canal, pipeline, or other conduit, and includes impoundment of water in a reservoir.

(d) "Person" means all persons whether natural or artificial, including the United States of America, State of California, and all political subdivisions, districts, municipalities, and public agencies.

~~(e) "Tidal zone" means those portions of the Sacramento San Joaquin Delta as described in Section 12220 that are ordinarily subject to tidal action.~~

SEC. 60. Section 5101 of the Water Code is amended to read:

5101. Each person who, after December 31, 1965, diverts water shall file with the board, prior to July 1 of the succeeding year, a statement of his *or her* diversion and use ~~;~~ ~~provided, however, that no statement need~~ *, except that a statement is not required to* be filed if the diversion is any of the following:

(a) From a spring ~~which~~ *that* does not flow off the property on which it is located *and from which the person's aggregate diversions do not exceed 25 acre-feet in any year* .

(b) Covered by ~~an application,~~ *a registration for small domestic or livestock stockpond uses, or* permit or license to appropriate water on file with the board.

(c) Included in a notice filed pursuant to Part 5 (commencing with Section 4999) ~~of this division~~ .

(d) Regulated by a watermaster appointed by the department *and included in annual reports filed with a court or the board by the watermaster, which reports identify the persons who have diverted water and describe the general purposes and the place, the use, and the quantity of water that has been diverted from each source* .

~~(e) Reported by the department in its hydrologic data bulletins.~~

~~(f) Included in the consumptive use data for the delta lowlands published by the department in its hydrologic data bulletins.~~

~~(g)~~

(e) Included in annual reports filed with a court or the board by a watermaster appointed by a court or pursuant to statute to administer a final judgment determining rights to water, which reports identify the persons who have diverted water and give the general place of use and the quantity of water ~~which~~ *that* has been diverted from each source.

~~(h)~~

(f) For use in compliance with ~~the provisions of~~ Article 2.5 (commencing with Section 1226) *or Article 2.7 (commencing with Section 1228)* of Chapter 1 of Part 2 ~~of this division~~ .

(g) A diversion that occurs before January 1, 2009, if any of the following applies:

(1) The diversion is from a spring that does not flow off the property on which it is located, and the person's aggregate diversions exceed 25 acre-feet in any year.

(2) The diversion is covered by an application to appropriate water on file with the board.

(3) The diversion is reported by the department in its hydrologic data bulletins.

(4) The diversion is included in the consumptive use data for the Delta lowlands published by the department in its hydrologic data bulletins.

SEC. 61. Section 5103 of the Water Code is amended to read:

5103. Each statement shall be prepared on a form provided by the board. The statement shall include all of the following information:

(a) The name and address of the person who diverted water and of the person filing the statement.

(b) The name of the stream or other source from which water was diverted, and the name of the next major stream or other body of water to which the source is tributary.

(c) The place of diversion. ~~If a public land survey has been made, location of~~ *The location of the* diversion works shall be ~~described~~ *depicted on a specific United States Geological Survey topographic map, or shall be identified using the California Coordinate System, or latitude and longitude measurements. If assigned, the public land description* to the nearest 40-acre subdivision ~~. If not, it shall be described by reference to nearest local landmarks or other recorded surveys~~ *and the assessor's parcel number shall also be provided* .

(d) The capacity of the diversion works and of the storage reservoir, if any, and the months in which water was used during the preceding calendar year.

(e) (1) On and after January 1, 2012, monthly records of water diversions. The measurements of the diversion shall be made using best available technologies and best professional practices. Nothing in this paragraph shall be construed to require the implementation of technologies or practices ~~that are~~ *by a person who provides to the board documentation demonstrating that the implementation of those practices is* not locally cost effective.

~~(2) Paragraph (1) does not apply to a surface water diversion with a combined diversion capacity from a natural channel that is less than 50 cubic feet per second or to diverters using siphons in the tidal zone.~~

~~(3)~~

(2) (A) The terms of, and eligibility for, any grant or loan awarded or administered by the department, the board, or the California Bay-Delta Authority *or its successor* on behalf of a person that is subject to paragraph (1) shall be conditioned on compliance with that paragraph.

(B) Notwithstanding subparagraph (A), the board may determine that a person is eligible for a grant or loan even though the person is

not complying with paragraph (1), if both of the following apply:

(i) The board determines that the grant or loan will assist the grantee or loan recipient in complying with paragraph (1).

(ii) The person has submitted to the board a one-year schedule for complying with paragraph (1).

(C) It is the intent of the Legislature that the requirements of this subdivision shall complement and not affect the scope of authority granted to the board by provisions of law other than this article.

~~(f) For persons not subject to paragraph (1) of subdivision (e), a description of the acreage of each crop irrigated, the average number of people served with water, the average number of stock watered, and the nature and extent of any other use during the preceding calendar year, or other equivalent information that indicates the quantity of water used as may be prescribed by the board. Those who maintain water measuring devices and keep monthly records of water diversions shall state the quantity of water diverted by months during the preceding calendar year.~~

~~(g)~~

(f) The purpose of use.

~~(h)~~

(g) A general description of the area in which the water was used. ~~If the water was used on an area within the 1/16 section containing the point of diversion, a statement to that effect will suffice; otherwise a description or sketch of the general area of use shall be given.~~ *The location of the place of use shall be depicted on a specific United States Geological Survey topographic map and on any other maps with identifiable landmarks. If assigned, the public land description to the nearest 40-acre subdivision and the assessor's parcel number shall also be provided.*

~~(i)~~

(h) The year in which the diversion was commenced as near as is known.

SEC. 62. Section 5106 of the Water Code is amended to read:

5106. (a) Neither the statements submitted under this part nor the determination of facts by the board pursuant to Section 5105 shall establish or constitute evidence of a right to divert or use water.

(b) (1) The board may rely on the names and addresses included in statements submitted under this part for the purpose of determining the names and addresses of persons who are to receive notices with regard to proceedings before the board.

(2) Notwithstanding paragraph (1), any person may submit, in writing, a request to the board to provide notification to a different address, and the board shall provide the notification to that address.

(3) If the board provides notice to persons who file statements under this part, the notice shall not be determined to be inadequate on the basis that notice was not received by a person, other than a party to whom the board's action is directed, who fails to file a statement required to be filed under this part.

(4) This subdivision does not affect the requirement in Section 2527 to provide notice to all persons who own land that appears to be riparian to the stream system.

(c) In any proceeding before the board to determine whether an application for a permit to appropriate water should be approved, any statement submitted under this part or determination by the board pursuant to Section 5105 is evidence of the facts stated therein.

(d) (1) In any proceeding before the board in which it is alleged that an appropriative right has ceased or is subject to forfeiture for nonuse because water has not been put to beneficial use, there shall be a rebuttable presumption that no use required to be included in a statement submitted under this part occurred unless that use is included in a statement submitted under this part and that the statement is submitted within six months after it is required to be filed with the board.

(2) Paragraph (1) does not apply to any use that occurred before January 1, 2009.

SEC. 63. Section 5107 of the Water Code is amended to read:

5107. (a) The making of any willful misstatement pursuant to this part is a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the county jail for not to exceed six months, or both.

(b) Any person who *fails to file a statement required to be filed under this part for a diversion or use that occurs after January 1, 2009, who tampers with any measuring device, or who* makes a material misstatement pursuant to this part may be liable civilly as provided in ~~subdivision (c)~~ *subdivisions (c) and (d)* .

(c) Civil liability may be administratively imposed by the board pursuant to Section 1055 in an amount not to exceed the following amounts:

(1) For failure to file a statement, one thousand dollars ($1,000), plus five hundred dollars ($500) per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the board has called the violation to the attention of that person.

(2) For a violation resulting from a physical malfunction of a measuring device not caused by the person or any other unintentional misstatement, two hundred fifty dollars ($250), plus two hundred fifty dollars ($250) per day for each additional day on which the measuring device continues to malfunction or the misstatement is not corrected if the person fails to correct or repair the measuring device or correct the misstatement within 60 days after the board has called the malfunction or violation to the attention of that person.

(3) For knowingly tampering with any measuring device or knowingly making a material misstatement in a statement filed under this part, twenty-five thousand dollars ($25,000), plus one thousand dollars ($1,000) for each day on which the violation continues if the person fails to correct the violation within 30 days after the board has called the violation to the attention of that person.

(4) For any other violation, five hundred dollars ($500), plus two hundred fifty dollars ($250) for each additional day on which the violation continues if the person fails to correct the violation within 30 days after the board has called the violation to the attention of that person.

(d) When an additional penalty may be imposed under subdivision (c) for failure to correct a violation or correct or repair a malfunctioning measuring device within a specified period after the violation has been called to a person's attention by the board, the board, for good cause, may provide for a longer period for correction of the problem, and the additional penalty shall not apply if the violation is corrected within the period specified by the board.

~~(c) Civil liability may be administratively imposed by the board pursuant to Section 1055 in an amount not to exceed five hundred dollars ($500) for each violation.~~

(e) In determining the appropriate amount,

the board shall consider all relevant circumstances, including, but not limited to, all of the following factors:

(1) The extent of harm caused by the violation.

(2) The nature and persistence of the violation.

(3) The length of time over which the violation occurs.

(4) Any corrective action undertaken by the violator.

~~(d)~~

(f) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal.

SEC. 64. Section 5108 of the Water Code is repealed.

~~5108. Statements filed pursuant to this part shall be for informational purposes only, and neither the failure to file a statement nor any error in the information filed shall have any legal consequences whatsoever other than those specified in this part.~~

SEC. 65. Part 2.55 (commencing with Section 10608) is added to Division 6 of the Water Code, to read:

PART 2.55. SUSTAINABLE WATER USE AND DEMAND REDUCTION

CHAPTER 1. GENERAL DECLARATIONS AND POLICY

10608. The Legislature finds and declares all of the following:

(a) Water is a public resource that the California Constitution protects against waste and unreasonable use.

(b) Growing population, climate change, and the need to protect and grow California's economy while protecting and restoring our fish and wildlife habitats make it essential that the state manage its water resources as efficiently as possible.

(c) Diverse regional water supply portfolios will increase water supply reliability and reduce dependence on the Delta.

(d) Reduced water use through conservation provides significant energy and environmental benefits, and can help protect water quality, improve streamflows, and reduce greenhouse gas emissions.

(e) The success of state and local water conservation programs to increase efficiency of water use is best determined on the basis of measurable outcomes related to water use or efficiency.

(f) Improvements in technology and management practices offer the potential for increasing water efficiency in California over time, providing an essential water management tool to meet the need for water for urban, agricultural, and environmental uses.

(g) The Governor has called for a 20 percent per capita reduction in urban water use statewide by 2020.

(h) The factors used to formulate water use efficiency targets can vary significantly from location to location based on factors including weather, patterns of urban and suburban development, and past efforts to enhance water use efficiency.

(i) Per capita water use is a valid measure of a water provider's efforts to reduce urban water use within its service area. However, per capita water use is less useful for measuring relative water use efficiency between different water providers. Differences in weather, historical patterns of urban and suburban development, and density of housing in a particular location need to be considered when assessing per capita water use as a measure of efficiency.

10608.4. It is the intent of the Legislature, by the enactment of

this part, to do all of the following:

(a) Require all water suppliers to increase the efficiency of use of this essential resource.

(b) Establish a framework to meet the state targets for urban water conservation identified in this part and called for by the Governor.

(c) Measure increased efficiency of urban water use on a per capita basis.

(d) Establish a method or methods for urban retail water suppliers to determine targets for achieving increased water use efficiency by the year 2020, in accordance with the Governor's goal of a 20-percent reduction.

(e) Establish consistent water use efficiency planning and implementation standards for urban water suppliers and agricultural water suppliers.

(f) Promote urban water conservation standards that are consistent with the California Urban Water Conservation Council's adopted best management practices and the requirements for demand management in Section 10631.

(g) Establish standards that recognize and provide credit to water suppliers that made substantial capital investments in urban water conservation since the drought of the early 1990s.

(h) Recognize and account for the investment of urban retail water suppliers in providing recycled water for beneficial uses.

(i) Require implementation of specified efficient water management practices for agricultural water suppliers.

(j) Support the economic productivity of California's agricultural, commercial, and industrial sectors.

(k) Advance regional water resources management.

10608.8. (a) (1) Water use efficiency measures adopted and implemented pursuant to this part or Part 2.8 (commencing with Section 10800) are water conservation measures subject to the protections provided under Section 1011.

(2) An urban retail water supplier's failure to meet the per capita targets established in Section 10608.20 ____. This paragraph does not limit the use of data reported to the department or the board in litigation or an administrative proceeding.

(3) To the extent feasible, the department and the board shall provide for the use of water conservation reports required under this part to meet the requirements of Section 1011 for water conservation reporting.

(b) This part does not limit or otherwise affect the application of Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) This part does not require a reduction in the total water used in the agricultural or urban sectors, because other factors, including, but not limited to, changes in agricultural economics or population growth may have greater effects on water use. This part does not limit the economic productivity of California's agricultural, commercial, or industrial sectors.

(d) The requirements of this part do not apply to an agricultural water supplier that is a party to the Quantification Settlement Agreement, as defined in subdivision (a) of Section 1 of Chapter 617 of the Statutes of 2002, during the period within which the Quantification Settlement Agreement remains in effect. After the expiration of the Quantification Settlement Agreement, to the extent conservation water projects implemented as part of the Quantification Settlement Agreement remain in effect, the conserved water created

as part of those projects shall be credited against the obligations of the agricultural water supplier pursuant to this part.

CHAPTER 2. DEFINITIONS

10608.12. Unless the context otherwise requires, the following definitions govern the construction of this part:

(a) "Agricultural water supplier" means a water supplier, either publicly or privately owned, providing water to 10,000 or more irrigated acres, excluding recycled water. "Agricultural water supplier" includes a supplier or contractor for water, regardless of the basis of right, that distributes or sells water for ultimate resale to customers.

(b) "Base daily per capita water use" means any of the following:

(1) The urban retail water supplier's estimate of its average gross water use, reported in gallons per capita per day and calculated over a continuous 10-year period ending no earlier than December 31, 2004, and no later than December 31, 2010.

(2) For an urban retail water supplier that meets at least 10 percent of its 2008 measured retail water demand through recycled water that is delivered within the service area of an urban retail water supplier or its urban wholesale water supplier, the urban retail water supplier may extend the calculation described in paragraph (1) up to an additional five years to a maximum of a continuous 15-year period ending no earlier than December 31, 2004, and no later than December 31, 2010.

(3) For the purposes of Section 10608.22, the urban retail water supplier's estimate of its average gross water use, reported in gallons per capita per day and calculated over a continuous five-year period ending no earlier than December 31, 2007, and no later than December 31, 2010.

(c) "Baseline commercial, industrial, and institutional water use" means an urban retail water supplier's base daily per capita water use for commercial, industrial, and institutional users.

(d) "Commercial water user" means a water user that provides or distributes a product or service.

(e) "Compliance daily per capita water use" means the gross water use during the final year of the reporting period, reported in gallons per capita per day.

(f) "Disadvantaged community" means a community with an annual median household income that is less than 80 percent of the statewide annual median household income.

(g) "Gross water use" means the total volume of water, whether treated or untreated, entering the distribution system of an urban retail water supplier, excluding all of the following:

(1) Recycled water that is delivered within the service area of an urban retail water supplier or its urban wholesale water supplier.

(2) The net volume of water that the urban retail water supplier places into long-term storage.

(3) The volume of water the urban retail water supplier conveys for use by another urban water supplier.

(4) The volume of water delivered for agricultural use, except as otherwise provided in subdivision (f) of Section 10608.24.

(h) "Industrial water user" means a water user that is primarily a manufacturer or processor of materials as defined by the North American Industry Classification System code sectors 31 to 33, inclusive.

(i) "Institutional water user" means a water user dedicated to public service. This type of user includes, among other users, higher education institutions, schools, courts, churches, hospitals, and

government facilities.

(j) "Interim urban water use target" means the midpoint between the urban retail water supplier's base daily per capita water use and the urban retail water supplier's urban water use target for 2020.

(k) "Locally cost effective" means that the present value of the local benefits of implementing an agricultural efficiency water management practice is greater than or equal to the present value of the local cost of implementing that measure.

(l) "Process water" means water used for producing a product or product content, including, but not limited to, continuous manufacturing processes. Process water uses include, but are not limited to, water used for testing and maintaining equipment used in producing a product or product content, and water used in combined heat and power facilities used in producing a product or product content. Process water does not mean incidental water uses not related to the production of a product or product content, including, but not limited to, water used for restrooms, landscaping, air conditioning, heating, kitchens, and laundry.

(m) "Recycled water" means recycled water, as defined in subdivision (n) of Section 13050, that is used to offset potable demand, including recycled water supplied for direct use and indirect potable reuse, that meets the following requirements, where applicable:

(1) For groundwater recharge, including recharge through spreading basins, water supplies that are all of the following:

(A) Metered.

(B) Developed through planned investment by the urban water supplier or a wastewater treatment agency.

(C) Treated to a minimum tertiary level.

(D) Delivered within the service area of an urban retail water supplier or its urban wholesale water supplier that helps an urban retail water supplier meet its urban water use target.

(2) For reservoir augmentation, water supplies that meet the criteria of paragraph (1) and are conveyed through a distribution system constructed specifically for recycled water.

(n) "Regional water resources management" means sources of supply resulting from watershed-based planning for sustainable local water reliability or any of the following alternative sources of water:

(1) The capture and reuse of stormwater or rainwater.

(2) The use of recycled water.

(3) The desalination of brackish groundwater.

(4) The conjunctive use of surface water and groundwater in a manner that is consistent with the safe yield of the groundwater basin.

(o) "Reporting period" means the years for which an urban retail water supplier reports compliance with the urban water use targets.

(p) "Urban retail water supplier" means a water supplier, either publicly or privately owned, that directly provides potable municipal water to more than 3,000 end users or that supplies more than 3,000 acre-feet of potable water annually at retail for municipal purposes.

(q) "Urban water use target" means the urban retail water supplier's targeted future daily per capita water use.

(r) "Urban wholesale water supplier," means a water supplier, either publicly or privately owned, that provides more than 3,000 acre-feet of water annually at wholesale for potable municipal purposes.

CHAPTER 3. URBAN RETAIL WATER SUPPLIERS

10608.16. (a) The state shall achieve a 20-percent reduction in urban per capita water use in California on or before December 31, 2020.

(b) The state shall make incremental progress towards the state target specified in subdivision (a) by reducing urban per capita water use by at least 10 percent on or before December 31, 2015.

10608.20. (a) (1) Each urban retail water supplier shall develop urban water use targets and an interim urban water use target by July 1, 2011. Urban retail water suppliers may elect to determine and report progress toward achieving these targets on an individual or regional basis, as provided in subdivision (a) of Section 10608.28, and may determine the targets on a fiscal year or calendar year basis.

(2) It is the intent of the Legislature that the urban water use targets described in subdivision (a) cumulatively result in a 20-percent reduction from the baseline daily per capita water use by December 31, 2020.

(b) An urban retail water supplier shall adopt one of the following methods for determining its urban water use target pursuant to subdivision (a):

(1) Eighty percent of the urban retail water supplier's baseline per capita daily water use.

(2) The per capita daily water use that is estimated using the sum of the following performance standards:

(A) For indoor residential water use, 55 gallons per capita daily water use as a provisional standard. Upon completion of the department's 2016 report to the Legislature pursuant to Section 10608.42, this standard may be adjusted by the Legislature by statute.

(B) For landscape irrigated through dedicated or residential meters or connections, water efficiency equivalent to the standards of the Model Water Efficient Landscape Ordinance set forth in Chapter 2.7 (commencing with Section 490) of Division 2 of Title 23 of the California Code of Regulations, as in effect the later of the year of the landscape's installation or 1992. An urban retail water supplier using the approach specified in this subparagraph shall use satellite imagery, site visits, or other best available technology to develop an accurate estimate of landscaped areas.

(C) For commercial, industrial, and institutional uses, a 10-percent reduction in water use from the baseline commercial, industrial, and institutional water use by 2020.

(3) Ninety-five percent of the applicable state hydrologic region target, as set forth in the state's draft 20x2020 Water Conservation Plan (dated April 30, 2009). If the service area of an urban water supplier includes more than one hydrologic region, the supplier shall apportion its service area to each region based on population or area.

(4) A method that shall be identified and developed by the department, through a public process, and reported to the Legislature no later than December 31, 2010. The method developed by the department shall identify per capita targets that cumulatively result in a statewide 20 percent reduction in urban daily per capita water use by December 31, 2020. If the department does not adopt a method pursuant to this paragraph, the urban retail water supplier shall adopt a method described in paragraph (1), (2), or (3). In developing urban daily per capita water use targets, the department shall do all of the following:

(A) Consider climatic differences within the state.

(B) Consider population density differences within the state.

(C) Provide flexibility to communities and regions in meeting the

targets.

(D) Consider different levels of per capita water use according to plant water needs in different regions.

(E) Consider different levels of commercial, industrial, and institutional water use in different regions of the state.

(F) Avoid placing an undue hardship on communities that have implemented conservation measures or taken actions to keep per capita water use low.

(c) The department shall update the method described in paragraph (4) of subdivision (b) and report to the Legislature by December 31, 2014. An urban retail water supplier that adopted the method described in paragraph (4) of subdivision (b) may adopt a new urban daily per capita water use target pursuant to this updated method.

(d) An urban retail water supplier shall include in its urban water management plan required pursuant to Part 2.6 (commencing with Section 10610) due in 2010 the baseline daily per capita water use, urban water use target, interim urban water use target, and compliance daily per capita water use, along with the bases for determining those estimates, including references to supporting data.

(e) When calculating per capita values for the purposes of this chapter, an urban retail water supplier shall determine population using federal, state, and local population reports and projections.

(f) An urban retail water supplier may update its 2020 urban water use target in its 2015 urban water management plan required pursuant to Part 2.6 (commencing with Section 10610).

(g) (1) The department, through a public process and in consultation with the California Urban Water Conservation Council, shall develop technical methodologies and criteria for the consistent implementation of this part, including, but not limited to, both of the following:

(A) Methodologies for calculating base daily per capita water use, baseline commercial, industrial, and institutional water use, compliance daily per capita water use, gross water use, service area population, indoor residential water use, and landscaped area water use.

(B) Criteria for adjustments pursuant to subdivisions (d) and (e) of Section 10608.24.

(2) The department shall post the methodologies and criteria developed pursuant to this subdivision on its Internet Web site, and make written copies available, by October 1, 2010. An urban retail water supplier shall use the methods developed by the department in compliance with this part.

(h) (1) The department shall adopt regulations for implementation of the provisions relating to process water in accordance with subdivision (l) of Section 10608.12, subdivision (e) of Section 10608.24, and subdivision (d) of Section 10608.26.

(2) The initial adoption of a regulation authorized by this subdivision is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted for that purpose from the requirements of subdivision (b) of Section 11346.1 of the Government Code. After the initial adoption of an emergency regulation pursuant to this subdivision, the department shall not request approval from the Office of Administrative Law to readopt the regulation as an emergency regulation pursuant to Section 11346.1 of the Government Code.

(i) An urban retail water supplier shall be granted an extension to July 1, 2011, for adoption of an urban water management plan pursuant to Part 2.6 (commencing with Section 10610) due in 2010 to

allow use of technical methodologies developed by the department pursuant to paragraph (4) of subdivision (b) and subdivision (g). An urban retail water supplier that adopts an urban water management plan due in 2010 that does not use the methodologies developed by the department pursuant to subdivision (g) shall amend the plan by July 1, 2011, to comply with this part.

10608.22. Notwithstanding the method adopted by an urban retail water supplier pursuant to Section 10608.20, an urban retail water supplier's per capita daily water use reduction shall be no less than 5 percent of base daily per capita water use as defined in paragraph (3) of subdivision (b) of Section 10608.12. This section does not apply to an urban retail water supplier with a base daily per capita water use at or below 100 gallons per capita per day.

10608.24. (a) Each urban retail water supplier shall meet its interim urban water use target by December 31, 2015.

(b) Each urban retail water supplier shall meet its urban water use target by December 31, 2020.

(c) An urban retail water supplier's compliance daily per capita water use shall be the measure of progress toward achievement of its urban water use target.

(d) (1) When determining compliance daily per capita water use, an urban retail water supplier may consider the following factors:

(A) Differences in evapotranspiration and rainfall in the baseline period compared to the compliance reporting period.

(B) Substantial changes to commercial or industrial water use resulting from increased business output and economic development that have occurred during the reporting period.

(C) Substantial changes to institutional water use resulting from fire suppression services or other extraordinary events, or from new or expanded operations, that have occurred during the reporting period.

(2) If the urban retail water supplier elects to adjust its estimate of compliance daily per capita water use due to one or more of the factors described in paragraph (1), it shall provide the basis for, and data supporting, the adjustment in the report required by Section 10608.40.

(e) When developing the urban water use target pursuant to Section 10608.20, an urban retail water supplier that has a substantial percentage of industrial water use in its service area, may exclude process water from the calculation of gross water use to avoid a disproportionate burden on another customer sector.

(f) (1) An urban retail water supplier that includes agricultural water use in an urban water management plan pursuant to Part 2.6 (commencing with Section 10610) may include the agricultural water use in determining gross water use. An urban retail water supplier that includes agricultural water use in determining gross water use and develops its urban water use target pursuant to paragraph (2) of subdivision (b) of Section 10608.20 shall use a water efficient standard for agricultural irrigation of 100 percent of reference evapotranspiration multiplied by the crop coefficient for irrigated acres.

(2) An urban retail water supplier, that is also an agricultural water supplier, is not subject to the requirements of Chapter 4 (commencing with Section 10608.48), if the agricultural water use is incorporated into its urban water use target pursuant to paragraph (1).

10608.26. (a) In complying with this part, an urban retail water supplier shall conduct at least one public hearing to accomplish all of the following:

(1) Allow community input regarding the urban retail water

supplier's implementation plan for complying with this part.

(2) Consider the economic impacts of the urban retail water supplier's implementation plan for complying with this part.

(3) Adopt a method, pursuant to subdivision (b) of Section 10608.20, for determining its urban water use target.

(b) In complying with this part, an urban retail water supplier may meet its urban water use target through efficiency improvements in any combination among its customer sectors. An urban retail water supplier shall avoid placing a disproportionate burden on any customer sector.

(c) For an urban retail water supplier that supplies water to a United States Department of Defense military installation, the urban retail water supplier's implementation plan for complying with this part shall consider the United States Department of Defense military installation's requirements under federal Executive Order 13423.

(d) (1) An urban retail water supplier shall not require customers existing on January 1, 2010, to undertake changes in product formulation, operations, or equipment that would reduce process water use, but may provide technical assistance and financial incentives to those customers to implement efficiency measures for process water.

(2) This part shall not be construed or enforced so as to interfere with the requirements of Chapter 4 (commencing with Section 113980) to Chapter 13 (commencing with Section 114380), inclusive, of Part 7 of Division 104 of the Health and Safety Code, or any requirement or standard for the protection of public health, public safety, or worker safety established by federal, state, or local government or recommended by recognized standard setting organizations or trade associations.

10608.28. (a) An urban retail water supplier may meet its urban water use target within its retail service area, or through mutual agreement, by any of the following:

(1) Through an urban wholesale water supplier.

(2) Through a regional agency authorized to plan and implement water conservation, including, but not limited to, an agency established under the Bay Area Water Supply and Conservation Agency Act (Division 31 (commencing with Section 81300)).

(3) Through a regional water management group as defined in Section 10537.

(4) By an integrated regional water management funding area.

(5) By hydrologic region.

(6) Through other appropriate geographic scales for which computation methods have been developed by the department.

(b) A regional water management group, with the written consent of its member agencies, may undertake any or all planning, reporting, and implementation functions under this chapter for the member agencies that consent to those activities. Any data or reports shall provide information both for the regional water management group and separately for each consenting urban retail water supplier and urban wholesale water supplier.

10608.32. All costs incurred pursuant to this part by a water utility regulated by the Public Utilities Commission may be recoverable in rates subject to review and approval by the Public Utilities Commission, and may be recorded in a memorandum account and reviewed for reasonableness by the Public Utilities Commission.

10608.36. Urban wholesale water suppliers shall include in the urban water management plans required pursuant to Part 2.6 (commencing with Section 10610) an assessment of their present and proposed future measures, programs, and policies to help achieve the water use reductions required by this part.

10608.40. Urban water retail suppliers shall report to the department on their progress in meeting their urban water use targets as part of their urban water management plans submitted pursuant to Section 10631. The data shall be reported using a standardized form developed pursuant to Section 10608.52.

10608.42. The department shall review the 2015 urban water management plans and report to the Legislature by December 31, 2016, on progress towards achieving a 20-percent reduction in urban water use by December 31, 2020. The report shall include recommendations on changes to water efficiency standards or urban water use targets in order to achieve the 20-percent reduction and to reflect updated efficiency information and technology changes.

10608.43. The department, in conjunction with the California Urban Water Conservation Council, by April 1, 2010, shall convene a representative task force consisting of academic experts, urban retail water suppliers, environmental organizations, commercial water users, industrial water users, and institutional water users to develop alternative best management practices for commercial, industrial, and institutional users and an assessment of the potential statewide water use efficiency improvement in the commercial, industrial, and institutional sectors that would result from implementation of these best management practices. The taskforce, in conjunction with the department, shall submit a report to the Legislature by April 1, 2012, that shall include a review of multiple sectors within commercial, industrial, and institutional users and that shall recommend water use efficiency standards for commercial, industrial, and institutional users among various sectors of water use. The report shall include, but not be limited to, the following:

(a) Appropriate metrics for evaluating commercial, industrial, and institutional water use.

(b) Evaluation of water demands for manufacturing processes, goods, and cooling.

(c) Evaluation of public infrastructure necessary for delivery of recycled water to the commercial, industrial, and institutional sectors.

(d) Evaluation of institutional and economic barriers to increased recycled water use within the commercial, industrial, and institutional sectors.

(e) Identification of technical feasibility and cost of the best management practices to achieve more efficient water use statewide in the commercial, industrial, and institutional sectors that is consistent with the public interest and reflects past investments in water use efficiency.

10608.44. Each state agency shall reduce water use on facilities it operates to support urban retail water suppliers in meeting the target identified in Section 10608.16.

CHAPTER 4. AGRICULTURAL WATER SUPPLIERS

10608.48. (a) On or before July 31, 2012, an agricultural water supplier shall implement efficient water management practices pursuant to subdivisions (b) and (c).

(b) Agricultural water suppliers shall implement all of the following critical efficient management practices:

(1) Measure the volume of water delivered to customers with sufficient accuracy to comply with subdivision (a) of Section 531.10.

(2) Adopt a pricing structure for water customers based at least in part on quantity delivered.

(c) Agricultural water suppliers shall implement additional efficient management practices, including, but not limited to, practices to accomplish all of the following, if the measures are locally cost effective and technically feasible:

(1) Facilitate alternative land use for lands with exceptionally high water duties or whose irrigation contributes to significant problems, including drainage.

(2) Facilitate use of available recycled water that otherwise would not be used beneficially, meets all health and safety criteria, and does not harm crops or soils.

(3) Facilitate the financing of capital improvements for on-farm irrigation systems.

(4) Implement an incentive pricing structure that promotes one or more of the following goals:

(A) More efficient water use at the farm level.

(B) Conjunctive use of groundwater.

(C) Appropriate increase of groundwater recharge.

(D) Reduction in problem drainage.

(E) Improved management of environmental resources.

(F) Effective management of all water sources throughout the year by adjusting seasonal pricing structures based on current conditions.

(5) Expand line or pipe distribution systems, and construct regulatory reservoirs to increase distribution system flexibility and capacity, decrease maintenance, and reduce seepage.

(6) Increase flexibility in water ordering by, and delivery to, water customers within operational limits.

(7) Construct and operate supplier spill and tailwater recovery systems.

(8) Increase planned conjunctive use of surface water and groundwater within the supplier service area.

(9) Automate canal control structures.

(10) Facilitate or promote customer pump testing and evaluation.

(11) Designate a water conservation coordinator who will develop and implement the water management plan and prepare progress reports.

(12) Provide for the availability of water management services to water users. These services may include, but are not limited to, all of the following:

(A) On-farm irrigation and drainage system evaluations.

(B) Normal year and real-time irrigation scheduling and crop evapotranspiration information.

(C) Surface water, groundwater, and drainage water quantity and quality data.

(D) Agricultural water management educational programs and materials for farmers, staff, and the public.

(13) Evaluate the policies of agencies that provide the supplier with water to identify the potential for institutional changes to allow more flexible water deliveries and storage.

(14) Evaluate and improve the efficiencies of the supplier's pumps.

(d) Agricultural water suppliers shall include in the agricultural water management plans required pursuant to Part 2.8 (commencing with Section 10800) a report on which efficient water management practices have been implemented and are planned to be implemented, an estimate of the water use efficiency improvements that have occurred since the last report, and an estimate of the water use efficiency improvements estimated to occur five and 10 years in the future. If an agricultural water supplier determines that an efficient water management practice is not locally cost effective or technically

feasible, the supplier shall submit information documenting that determination.

(e) The data shall be reported using a standardized form developed pursuant to Section 10608.52.

(f) An agricultural water supplier may meet the requirements of subdivisions (d) and (e) by submitting to the department a water conservation plan submitted to the United States Bureau of Reclamation that meets the requirements described in Section 10828.

(g) On or before December 31, 2013, December 31, 2016, and December 31, 2021, the department, in consultation with the board, shall submit to the Legislature a report on the agricultural efficient water management practices that have been implemented and are planned to be implemented and an assessment of the manner in which the implementation of those efficient water management practices has affected and will affect agricultural operations, including estimated water use efficiency improvements, if any.

(h) The department may update the efficient water management practices required pursuant to subdivision (c), in consultation with the Agricultural Water Management Council, the United States Bureau of Reclamation, and the board. All efficient water management practices for agricultural water use pursuant to this chapter shall be adopted or revised by the department only after the department conducts public hearings to allow participation of the diverse geographical areas and interests of the state.

(i) (1) The department shall adopt regulations that provide for a range of options that agricultural water suppliers may use or implement to comply with the measurement requirement in paragraph (1) of subdivision (b).

(2) The initial adoption of a regulation authorized by this subdivision is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted for that purpose from the requirements of subdivision (b) of Section 11346.1 of the Government Code. After the initial adoption of an emergency regulation pursuant to this subdivision, the department shall not request approval from the Office of Administrative Law to readopt the regulation as an emergency regulation pursuant to Section 11346.1 of the Government Code.

CHAPTER 5. SUSTAINABLE WATER MANAGEMENT

10608.50. (a) The department, in consultation with the board, shall promote implementation of regional water resources management practices through increased incentives and removal of barriers consistent with state and federal law. Potential changes may include, but are not limited to, all of the following:

(1) Revisions to the requirements for urban and agricultural water management plans.

(2) Revisions to the requirements for integrated regional water management plans.

(3) Revisions to the eligibility for state water management grants and loans.

(4) Revisions to state or local permitting requirements that increase water supply opportunities, but do not weaken water quality protection under state and federal law.

(5) Increased funding for research, feasibility studies, and project construction.

(6) Expanding technical and educational support for local land use and water management agencies.

(b) No later than January 1, 2011, and updated as part of the

California Water Plan, the department, in consultation with the board, and with public input, shall propose new statewide targets, or review and update existing statewide targets, for regional water resources management practices, including, but not limited to, recycled water, brackish groundwater desalination, and infiltration and direct use of urban stormwater runoff.

CHAPTER 6. STANDARDIZED DATA COLLECTION

10608.52. (a) The department, in consultation with the board, the California Bay-Delta Authority or its successor agency, the State Department of Public Health, and the Public Utilities Commission, shall develop a single standardized water use reporting form to meet the water use information needs of each agency, including the needs of urban water suppliers that elect to determine and report progress toward achieving targets on a regional basis as provided in subdivision (a) of Section 10608.28.

(b) At a minimum, the form shall be developed to accommodate information sufficient to assess an urban water supplier's compliance with conservation targets pursuant to Section 10608.24 and an agricultural water supplier's compliance with implementation of efficient water management practices pursuant to subdivision (a) of Section 10608.48. The form shall accommodate reporting by urban water suppliers on an individual or regional basis as provided in subdivision (a) of Section 10608.28.

CHAPTER 7. FUNDING PROVISIONS

10608.56. (a) On and after July 1, 2016, an urban retail water supplier is not eligible for a water grant or loan awarded or administered by the state unless the supplier complies with this part.

(b) On and after July 1, 2013, an agricultural water supplier is not eligible for a water grant or loan awarded or administered by the state unless the supplier complies with this part.

(c) Notwithstanding subdivision (a), the department shall determine that an urban retail water supplier is eligible for a water grant or loan even though the supplier has not met the per capita reductions required pursuant to Section 10608.24, if the urban retail water supplier has submitted to the department for approval a schedule, financing plan, and budget, to be included in the grant or loan agreement, for achieving the per capita reductions. The supplier may request grant or loan funds to achieve the per capita reductions to the extent the request is consistent with the eligibility requirements applicable to the water funds.

(d) Notwithstanding subdivision (b), the department shall determine that an agricultural water supplier is eligible for a water grant or loan even though the supplier is not implementing all of the efficient water management practices described in Section 10608.48, if the agricultural water supplier has submitted to the department for approval a schedule, financing plan, and budget, to be included in the grant or loan agreement, for implementation of the efficient water management practices. The supplier may request grant or loan funds to implement the efficient water management practices to the extent the request is consistent with the eligibility requirements applicable to the water funds.

(e) Notwithstanding subdivision (a), the department shall determine that an urban retail water supplier is eligible for a water grant or loan even though the supplier has not met the per capita reductions required pursuant to Section 10608.24, if the urban retail

water supplier has submitted to the department for approval documentation demonstrating that its entire service area qualifies as a disadvantaged community.

(f) The department shall not deny eligibility to an urban retail water supplier or agricultural water supplier in compliance with the requirements of this part and Part 2.8 (commencing with Section 10800), that is participating in a multiagency water project, or an integrated regional water management plan, developed pursuant to Section 75026 of the Public Resources Code, solely on the basis that one or more of the agencies participating in the project or plan is not implementing all of the requirements of this part or Part 2.8 (commencing with Section 10800).

10608.60. (a) It is the intent of the Legislature that funds made available by Section 75026 of the Public Resources Code should be expended, consistent with Division 43 (commencing with Section 75001) of the Public Resources Code and upon appropriation by the Legislature, for grants to implement this part. In the allocation of funding, it is the intent of the Legislature that the department give consideration to disadvantaged communities to assist in implementing the requirements of this part.

(b) It is the intent of the Legislature that funds made available by Section 75041 of the Public Resources Code, should be expended, consistent with Division 43 (commencing with Section 75001) of the Public Resources Code and upon appropriation by the Legislature, for direct expenditures to implement this part.

CHAPTER 8. QUANTIFYING AGRICULTURAL WATER USE EFFICIENCY

10608.64. The department, in consultation with the Agricultural Water Management Council, academic experts, and other stakeholders, shall develop a methodology for quantifying the efficiency of agricultural water use. Alternatives to be assessed shall include, but not be limited to, determination of efficiency levels based on crop type or irrigation system distribution uniformity. On or before December 31, 2011, the department shall report to the Legislature on a proposed methodology and a plan for implementation. The plan shall include the estimated implementation costs and the types of data needed to support the methodology. Nothing in this section authorizes the department to implement a methodology established pursuant to this section.

SEC. 66. Section 10631.5 of the Water Code is amended to read:

10631.5. (a) (1) Beginning January 1, 2009, the terms of, and eligibility for, a water management grant or loan made to an urban water supplier and awarded or administered by the department, state board, or California Bay-Delta Authority or its successor agency shall be conditioned on the implementation of the water demand management measures described in Section 10631, as determined by the department pursuant to subdivision (b).

(2) For the purposes of this section, water management grants and loans include funding for programs and projects for surface water or groundwater storage, recycling, desalination, water conservation, water supply reliability, and water supply augmentation. This section does not apply to water management projects funded by the *federal* American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(3) Notwithstanding paragraph (1), the department shall determine that an urban water supplier is eligible for a water management grant or loan even though the supplier is not implementing all of the water demand management measures described in Section 10631, if the urban water supplier has submitted to the department for approval a

schedule, financing plan, and budget, to be included in the grant or loan agreement, for implementation of the water demand management measures. The supplier may request grant or loan funds to implement the water demand management measures to the extent the request is consistent with the eligibility requirements applicable to the water management funds.

(4) (A) Notwithstanding paragraph (1), the department shall determine that an urban water supplier is eligible for a water management grant or loan even though the supplier is not implementing all of the water demand management measures described in Section 10631, if an urban water supplier submits to the department for approval documentation demonstrating that a water demand management measure is not locally cost effective. If the department determines that the documentation submitted by the urban water supplier fails to demonstrate that a water demand management measure is not locally cost effective, the department shall notify the urban water supplier and the agency administering the grant or loan program within 120 days that the documentation does not satisfy the requirements for an exemption, and include in that notification a detailed statement to support the determination.

(B) For purposes of this paragraph, "not locally cost effective" means that the present value of the local benefits of implementing a water demand management measure is less than the present value of the local costs of implementing that measure.

(b) (1) The department, in consultation with the state board and the California Bay-Delta Authority or its successor agency, and after soliciting public comment regarding eligibility requirements, shall develop eligibility requirements to implement the requirement of paragraph (1) of subdivision (a). In establishing these eligibility requirements, the department shall do both of the following:

(A) Consider the conservation measures described in the Memorandum of Understanding Regarding Urban Water Conservation in California, and alternative conservation approaches that provide equal or greater water savings.

(B) Recognize the different legal, technical, fiscal, and practical roles and responsibilities of wholesale water suppliers and retail water suppliers.

(2) (A) For the purposes of this section, the department shall determine whether an urban water supplier is implementing all of the water demand management measures described in Section 10631 based on either, or a combination, of the following:

(i) Compliance on an individual basis.

(ii) Compliance on a regional basis. Regional compliance shall require participation in a regional conservation program consisting of two or more urban water suppliers that achieves the level of conservation or water efficiency savings equivalent to the amount of conservation or savings achieved if each of the participating urban water suppliers implemented the water demand management measures. The urban water supplier administering the regional program shall provide participating urban water suppliers and the department with data to demonstrate that the regional program is consistent with this clause. The department shall review the data to determine whether the urban water suppliers in the regional program are meeting the eligibility requirements.

(B) The department may require additional information for any determination pursuant to this section.

(3) The department shall not deny eligibility to an urban water supplier in compliance with the requirements of this section that is participating in a multiagency water project, or an integrated regional water management plan, developed pursuant to Section 75026

of the Public Resources Code, solely on the basis that one or more of the agencies participating in the project or plan is not implementing all of the water demand management measures described in Section 10631.

(c) In establishing guidelines pursuant to the specific funding authorization for any water management grant or loan program subject to this section, the agency administering the grant or loan program shall include in the guidelines the eligibility requirements developed by the department pursuant to subdivision (b).

(d) Upon receipt of a water management grant or loan application by an agency administering a grant and loan program subject to this section, the agency shall request an eligibility determination from the department with respect to the requirements of this section. The department shall respond to the request within 60 days of the request.

(e) The urban water supplier may submit to the department copies of its annual reports and other relevant documents to assist the department in determining whether the urban water supplier is implementing or scheduling the implementation of water demand management activities. In addition, for urban water suppliers that are signatories to the Memorandum of Understanding Regarding Urban Water Conservation in California and submit biennial reports to the California Urban Water Conservation Council in accordance with the memorandum, the department may use these reports to assist in tracking the implementation of water demand management measures.

(f) This section shall remain in effect only until July 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2016, deletes or extends that date.

SEC. 67. Part 2.8 (commencing with Section 10800) of Division 6 of the Water Code is repealed.

SEC. 68. Part 2.8 (commencing with Section 10800) is added to Division 6 of the Water Code, to read:

PART 2.8. AGRICULTURAL WATER MANAGEMENT PLANNING

CHAPTER 1. GENERAL DECLARATIONS AND POLICY

10800. This part shall be known and may be cited as the Agricultural Water Management Planning Act.

10801. The Legislature finds and declares all of the following:

(a) The waters of the state are a limited and renewable resource.

(b) The California Constitution requires that water in the state be used in a reasonable and beneficial manner.

(c) Urban water districts are required to adopt water management plans.

(d) The conservation of agricultural water supplies is of great statewide concern.

(e) There is a great amount of reuse of delivered water, both inside and outside the water service areas.

(f) Significant noncrop beneficial uses are associated with agricultural water use, including streamflows and wildlife habitat.

(g) Significant opportunities exist in some areas, through improved irrigation water management, to conserve water or to reduce the quantity of highly saline or toxic drainage water.

(h) Changes in water management practices should be carefully planned and implemented to minimize adverse effects on other beneficial uses currently being served.

(i) Agricultural water suppliers that receive water from the federal Central Valley Project are required by federal law to prepare and implement water conservation plans.

(j) Agricultural water users applying for a permit to appropriate water from the board are required to prepare and implement water conservation plans.

10802. The Legislature finds and declares that all of the following are the policies of the state:

(a) The conservation of water shall be pursued actively to protect both the people of the state and the state's water resources.

(b) The conservation of agricultural water supplies shall be an important criterion in public decisions with regard to water.

(c) Agricultural water suppliers shall be required to prepare water management plans to achieve conservation of water.

CHAPTER 2. DEFINITIONS

10810. Unless the context otherwise requires, the definitions set forth in this chapter govern the construction of this part.

10811. "Agricultural water management plan" or "plan" means an agricultural water management plan prepared pursuant to this part.

10812. "Agricultural water supplier" has the same meaning as defined in Section 10608.12.

10813. "Customer" means a purchaser of water from a water supplier who uses water for agricultural purposes.

10814. "Person" means any individual, firm, association, organization, partnership, business, trust, corporation, company, public agency, or any agency of that entity.

10815. "Public agency" means any city, county, city and county, special district, or other public entity.

10816. "Urban water supplier" has the same meaning as set forth in Section 10617.

10817. "Water conservation" means the efficient management of water resources for beneficial uses, preventing waste, or accomplishing additional benefits with the same amount of water.

CHAPTER 3. AGRICULTURAL WATER MANAGEMENT PLANS

Article 1. General Provisions

10820. (a) An agricultural water supplier shall prepare and adopt an agricultural water management plan in the manner set forth in this chapter on or before December 31, 2012, and shall update that plan on December 31, 2015, and on or before December 31 every five years thereafter.

(b) Every supplier that becomes an agricultural water supplier after December 31, 2012, shall prepare and adopt an agricultural water management plan within one year after the date it has become an agricultural water supplier.

(c) A water supplier that indirectly provides water to customers for agricultural purposes shall not prepare a plan pursuant to this part without the consent of each agricultural water supplier that directly provides that water to its customers.

10821. (a) An agricultural water supplier required to prepare a plan pursuant to this part shall notify each city or county within which the supplier provides water supplies that the agricultural water supplier will be preparing the plan or reviewing the plan and considering amendments or changes to the plan. The agricultural water

supplier may consult with, and obtain comments from, each city or county that receives notice pursuant to this subdivision.

(b) The amendments to, or changes in, the plan shall be adopted and submitted in the manner set forth in Article 3 (commencing with Section 10840).

Article 2. Contents of Plans

10825. (a) It is the intent of the Legislature in enacting this part to allow levels of water management planning commensurate with the numbers of customers served and the volume of water supplied.

(b) This part does not require the implementation of water conservation programs or practices that are not locally cost effective.

10826. An agricultural water management plan shall be adopted in accordance with this chapter. The plan shall do all of the following:

(a) Describe the agricultural water supplier and the service area, including all of the following:

(1) Size of the service area.

(2) Location of the service area and its water management facilities.

(3) Terrain and soils.

(4) Climate.

(5) Operating rules and regulations.

(6) Water delivery measurements or calculations.

(7) Water rate schedules and billing.

(8) Water shortage allocation policies.

(b) Describe the quantity and quality of water resources of the agricultural water supplier, including all of the following:

(1) Surface water supply.

(2) Groundwater supply.

(3) Other water supplies.

(4) Source water quality monitoring practices.

(5) Water uses within the agricultural water supplier's service area, including all of the following:

(A) Agricultural.

(B) Environmental.

(C) Recreational.

(D) Municipal and industrial.

(E) Groundwater recharge.

(F) Transfers and exchanges.

(G) Other water uses.

(6) Drainage from the water supplier's service area.

(7) Water accounting, including all of the following:

(A) Quantifying the water supplier's water supplies.

(B) Tabulating water uses.

(C) Overall water budget.

(8) Water supply reliability.

(c) Include an analysis, based on available information, of the effect of climate change on future water supplies.

(d) Describe previous water management activities.

(e) Include in the plan the water use efficiency information required pursuant to Section 10608.48.

10827. Agricultural water suppliers that are members of the Agricultural Water Management Council, and that submit water management plans to that council in accordance with the "Memorandum of Understanding Regarding Efficient Water Management Practices By Agricultural Water Suppliers In California," dated January 1, 1999,

may submit the water management plans identifying water demand management measures currently being implemented, or scheduled for implementation, to satisfy the requirements of Section 10826.

10828. (a) Agricultural water suppliers that are required to submit water conservation plans to the United States Bureau of Reclamation pursuant to either the Central Valley Project Improvement Act (Public Law 102-575) or the Reclamation Reform Act of 1982, or both, may submit those water conservation plans to satisfy the requirements of Section 10826, if both of the following apply:

(1) The agricultural water supplier has adopted and submitted the water conservation plan to the United States Bureau of Reclamation within the previous four years.

(2) The United States Bureau of Reclamation has accepted the water conservation plan as adequate.

(b) This part does not require agricultural water suppliers that are required to submit water conservation plans to the United States Bureau of Reclamation pursuant to either the Central Valley Project Improvement Act (Public Law 102-575) or the Reclamation Reform Act of 1982, or both, to prepare and adopt water conservation plans according to a schedule that is different from that required by the United States Bureau of Reclamation.

10829. An agricultural water supplier may satisfy the requirements of this part by adopting an urban water management plan pursuant to Part 2.6 (commencing with Section 10610) or by participation in area wide, regional, watershed, or basinwide water management planning if those plans meet or exceed the requirements of this part.

Article 3. Adoption and Implementation of Plans

10840. Every agricultural water supplier shall prepare its plan pursuant to Article 2 (commencing with Section 10825).

10841. Prior to adopting a plan, the agricultural water supplier shall make the proposed plan available for public inspection, and shall hold a public hearing on the plan. Prior to the hearing, notice of the time and place of hearing shall be published within the jurisdiction of the publicly owned agricultural water supplier pursuant to Section 6066 of the Government Code. A privately owned agricultural water supplier shall provide an equivalent notice within its service area and shall provide a reasonably equivalent opportunity that would otherwise be afforded through a public hearing process for interested parties to provide input on the plan. After the hearing, the plan shall be adopted as prepared or as modified during or after the hearing.

10842. An agricultural water supplier shall implement the plan adopted pursuant to this chapter in accordance with the schedule set forth in its plan, as determined by the governing body of the agricultural water supplier.

10843. (a) An agricultural water supplier shall submit to the entities identified in subdivision (b) a copy of its plan no later than 30 days after the adoption of the plan. Copies of amendments or changes to the plans shall be submitted to the entities identified in subdivision (b) within 30 days after the adoption of the amendments or changes.

(b) An agricultural water supplier shall submit a copy of its plan and amendments or changes to the plan to each of the following entities:

(1) The department.

(2) Any city, county, or city and county within which the

agricultural water supplier provides water supplies.

(3) Any groundwater management entity within which jurisdiction the agricultural water supplier extracts or provides water supplies.

(4) Any urban water supplier within which jurisdiction the agricultural water supplier provides water supplies.

(5) Any city or county library within which jurisdiction the agricultural water supplier provides water supplies.

(6) The California State Library.

(7) Any local agency formation commission serving a county within which the agricultural water supplier provides water supplies.

10844. (a) Not later than 30 days after the date of adopting its plan, the agricultural water supplier shall make the plan available for public review on the agricultural water supplier's Internet Web site.

(b) An agricultural water supplier that does not have an Internet Web site shall submit to the department, not later than 30 days after the date of adopting its plan, a copy of the adopted plan in an electronic format. The department shall make the plan available for public review on the department's Internet Web site.

10845. (a) The department shall prepare and submit to the Legislature, on or before December 31, 2013, and thereafter in the years ending in six and years ending in one, a report summarizing the status of the plans adopted pursuant to this part.

(b) The report prepared by the department shall identify the outstanding elements of any plan adopted pursuant to this part. The report shall include an evaluation of the effectiveness of this part in promoting efficient agricultural water management practices and recommendations relating to proposed changes to this part, as appropriate.

(c) The department shall provide a copy of the report to each agricultural water supplier that has submitted its plan to the department. The department shall also prepare reports and provide data for any legislative hearing designed to consider the effectiveness of plans submitted pursuant to this part.

(d) This section does not authorize the department, in preparing the report, to approve, disapprove, or critique individual plans submitted pursuant to this part.

CHAPTER 4. MISCELLANEOUS PROVISIONS

10850. (a) Any action or proceeding to attack, review, set aside, void, or annul the acts or decisions of an agricultural water supplier on the grounds of noncompliance with this part shall be commenced as follows:

(1) An action or proceeding alleging failure to adopt a plan shall be commenced within 18 months after that adoption is required by this part.

(2) Any action or proceeding alleging that a plan, or action taken pursuant to the plan, does not comply with this part shall be commenced within 120 days after submitting the plan or amendments to the plan to entities in accordance with Section 10844 or the taking of that action.

(b) In an action or proceeding to attack, review, set aside, void, or annul a plan, or an action taken pursuant to the plan by an agricultural water supplier, on the grounds of noncompliance with this part, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agricultural water supplier has not proceeded in a manner required by law, or if the action by the agricultural water supplier is not supported by substantial evidence.

10851. The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to the preparation and adoption of plans pursuant to this part. This part does not exempt projects for implementation of the plan or for expanded or additional water supplies from the California Environmental Quality Act.

10852. An agricultural water supplier is not eligible for a water grant or loan awarded or administered by the state unless the supplier complies with this part.

10853. No agricultural water supplier that provides water to less than 25,000 irrigated acres, excluding recycled water, shall be required to implement the requirements of this part or Part 2.55 (commencing with Section 10608) unless sufficient funding has specifically been provided to that water supplier for these purposes.

SEC. 69. Part 2.11 (commencing with Section 10920) is added to Division 6 of the Water Code, to read:

PART 2.11. GROUNDWATER MONITORING

CHAPTER 1. GENERAL PROVISIONS

10920. (a) It is the intent of the Legislature that on or before January 1, 2012, groundwater elevations in all groundwater basins and subbasins be regularly and systematically monitored locally and that the resulting groundwater information be made readily and widely available.

(b) It is further the intent of the Legislature that the department continue to maintain its current network of monitoring wells, including groundwater elevation and groundwater quality monitoring wells, and that the department continue to coordinate monitoring with local entities.

10921. This part does not require the monitoring of groundwater elevations in an area that is not within a basin or subbasin.

10922. This part does not expand or otherwise affect the powers or duties of the department relating to groundwater beyond those expressly granted by this part.

CHAPTER 2. DEFINITIONS

10925. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this part.

(a) "Basin" or "subbasin" means a groundwater basin or subbasin identified and defined in the department's Bulletin No. 118.

(b) "Bulletin No. 118" means the department's report entitled "California's Groundwater: Bulletin 118" updated in 2003, or as it may be subsequently updated or revised in accordance with Section 12924.

(c) "Monitoring entity" means a party conducting or coordinating the monitoring of groundwater elevations pursuant to this part.

(d) "Monitoring functions" and "groundwater monitoring functions" means the monitoring of groundwater elevations, the reporting of those elevations to the department, and other related actions required by this part.

(e) "Monitoring groundwater elevations" means monitoring groundwater elevations, coordinating the monitoring of groundwater elevations, or both.

(f) "Voluntary cooperative groundwater monitoring association"

means an association formed for the purposes of monitoring groundwater elevations pursuant to Section 10935.

CHAPTER 3. GROUNDWATER MONITORING PROGRAM

10927. Any of the following entities may assume responsibility for monitoring and reporting groundwater elevations in all or a part of a basin or subbasin in accordance with this part:

(a) A watermaster or water management engineer appointed by a court or pursuant to statute to administer a final judgment determining rights to groundwater.

(b) (1) A groundwater management agency with statutory authority to manage groundwater pursuant to its principal act that is monitoring groundwater elevations in all or a part of a groundwater basin or subbasin on or before January 1, 2010.

(2) A water replenishment district established pursuant to Division 18 (commencing with Section 60000). This part does not expand or otherwise affect the authority of a water replenishment district relating to monitoring groundwater elevations.

(c) A local agency that is managing all or part of a groundwater basin or subbasin pursuant to Part 2.75 (commencing with Section 10750) and that was monitoring groundwater elevations in all or a part of a groundwater basin or subbasin on or before January 1, 2010, or a local agency or county that is managing all or part of a groundwater basin or subbasin pursuant to any other legally enforceable groundwater management plan with provisions that are substantively similar to those described in that part and that was monitoring groundwater elevations in all or a part of a groundwater basin or subbasin on or before January 1, 2010.

(d) A local agency that is managing all or part of a groundwater basin or subbasin pursuant to an integrated regional water management plan prepared pursuant to Part 2.2 (commencing with Section 10530) that includes a groundwater management component that complies with the requirements of Section 10753.7.

(e) A county that is not managing all or a part of a groundwater basin or subbasin pursuant to a legally enforceable groundwater management plan with provisions that are substantively similar to those described in Part 2.75 (commencing with Section 10750).

(f) A voluntary cooperative groundwater monitoring association formed pursuant to Section 10935.

10928. (a) Any entity described in subdivision (a) or (b) of Section 10927 that seeks to assume groundwater monitoring functions in accordance with this part shall notify the department, in writing, on or before January 1, 2011. The notification shall include all of the following information:

(1) The entity's name, address, telephone number, and any other relevant contact information.

(2) The specific authority described in Section 10927 pursuant to which the entity qualifies to assume the groundwater monitoring functions.

(3) A map showing the area for which the entity is requesting to perform the groundwater monitoring functions.

(4) A statement that the entity will comply with all of the requirements of this part.

(b) Any entity described in subdivision (c), (d), (e), or (f) of Section 10927 that seeks to assume groundwater monitoring functions in accordance with this part shall notify the department, in writing, by January 1, 2011. The information provided in the notification shall include all of the following:

(1) The entity's name, address, telephone number, and any other

relevant contact information.

(2) The specific authority described in Section 10927 pursuant to which the entity qualifies to assume the groundwater monitoring functions.

(3) For entities that seek to qualify pursuant to subdivision (c) or (d) of Section 10927, the notification shall also include a copy of the current groundwater management plan or the groundwater component of the integrated regional water management plan, as appropriate.

(4) For entities that seek to qualify pursuant to subdivision (f) of Section 10927, the notification shall include a statement of intention to meet the requirements of Section 10935.

(5) A map showing the area for which the entity is proposing to perform the groundwater monitoring functions.

(6) A statement that the entity will comply with all of the requirements of this part.

(7) A statement describing the ability and qualifications of the entity to conduct the groundwater monitoring functions required by this part.

(c) The department may request additional information that it deems necessary for the purposes of determining the area that is proposed to be
monitored or the qualifications of the entity to perform the groundwater monitoring functions.

10929. (a) (1) The department shall review all notifications received pursuant to Section 10928.

(2) Upon the receipt of a notification pursuant to subdivision (a) of Section 10928, the department shall verify that the notifying entity has the appropriate authority under subdivision (a) or (b) of Section 10927.

(3) Upon the receipt of a notification pursuant to subdivision (b) of Section 10928, the department shall do both of the following:

(A) Verify that each notification is complete.

(B) Assess the qualifications of the notifying party.

(b) If the department has questions about the completeness or accuracy of a notification, or the qualifications of a party, the department shall contact the party to resolve any deficiencies. If the department is unable to resolve the deficiencies, the department shall notify the party in writing that the notification will not be considered further until the deficiencies are corrected.

(c) If the department determines that more than one party seeks to become the monitoring entity for the same portion of a basin or subbasin, the department shall consult with the interested parties to determine which party will perform the monitoring functions. In determining which party will perform the monitoring functions under this part, the department shall follow the order in which entities are identified in Section 10927.

(d) The department shall advise each party on the status of its notification within three months of receiving the notification.

10930. Upon completion of each review pursuant to Section 10929, the department shall do both of the following if it determines that a party will perform monitoring functions under this part:

(a) Notify the party in writing that it is a monitoring entity and the specific portion of the basin or subbasin for which it shall assume groundwater monitoring functions.

(b) Post on the department's Internet Web site information that identifies the monitoring entity and the portion of the basin or subbasin for which the monitoring entity will be responsible.

10931. (a) The department shall work cooperatively with each monitoring entity to determine the manner in which groundwater

elevation information should be reported to the department pursuant to this part. In determining what information should be reported to the department, the department shall defer to existing monitoring programs if those programs result in information that demonstrates seasonal and long-term trends in groundwater elevations. The department shall collaborate with the State Department of Public Health to ensure that the information reported to the department will not result in the inappropriate disclosure of the physical address or geographical location of drinking water sources, storage facilities, pumping operational data, or treatment facilities.

(b) (1) For the purposes of this part, the department may recommend improvements to an existing monitoring program, including recommendations for additional monitoring wells.

(2) The department may not require additional monitoring wells unless funds are provided for that purpose.

10932. Monitoring entities shall commence monitoring and reporting groundwater elevations pursuant to this part on or before January 1, 2012.

10933. (a) On or before January 1, 2012, the department shall commence to identify the extent of monitoring of groundwater elevations that is being undertaken within each basin and subbasin.

(b) The department shall prioritize groundwater basins and subbasins for the purpose of implementing this section. In prioritizing the basins and subbasins, the department shall, to the extent data are available, consider all of the following:

(1) The population overlying the basin or subbasin.

(2) The rate of current and projected growth of the population overlying the basin or subbasin.

(3) The number of public supply wells that draw from the basin or subbasin.

(4) The total number of wells that draw from the basin or subbasin.

(5) The irrigated acreage overlying the basin or subbasin.

(6) The degree to which persons overlying the basin or subbasin rely on groundwater as their primary source of water.

(7) Any documented impacts on the groundwater within the basin or subbasin, including overdraft, subsidence, saline intrusion, and other water quality degradation.

(8) Any other information determined to be relevant by the department.

(c) If the department determines that all or part of a basin or subbasin is not being monitored pursuant to this part, the department shall do all of the following:

(1) Attempt to contact all well owners within the area not being monitored.

(2) Determine if there is an interest in establishing any of the following:

(A) A groundwater management plan pursuant to Part 2.75 (commencing with Section 10750).

(B) An integrated regional water management plan pursuant to Part 2.2 (commencing with Section 10530) that includes a groundwater management component that complies with the requirements of Section 10753.7.

(C) A voluntary groundwater monitoring association pursuant to Section 10935.

(d) If the department determines that there is sufficient interest in establishing a plan or association described in paragraph (2) of subdivision (c), or if the county agrees to perform the groundwater monitoring functions in accordance with this part, the department shall work cooperatively with the interested parties to comply with

the requirements of this part within two years.

(e) (1) If the department determines, with regard to a basin or subbasin, that there is insufficient interest in establishing a plan or association described in paragraph (2) of subdivision (c), the department shall notify the county or counties within which the basin or subbasin is located, in whole or in part, of that determination.

(2) Any county notified by the department pursuant to paragraph (1) that there is insufficient interest in establishing a plan or association described in paragraph (2) of subdivision (c) shall, within two years of notification by the department, do one of the following:

(A) Form or facilitate the formation of a plan or association described in paragraph (2) of subdivision (c) to perform the groundwater monitoring functions in accordance with this part.

(B) Perform the groundwater monitoring functions in accordance with this part.

10933.5. If a county is notified pursuant to subdivision (e) of Section 10933 and fails to undertake one of the two actions described in paragraph (2) of subdivision (e) of Section 10933, the county and the entities described in subdivisions (a) to (d), inclusive, of Section 10927 shall not be eligible for a water grant or loan awarded or administered by the state until either of the following occurs:

(a) The county complies with paragraph (2) of subdivision (e) of Section 10933.

(b) One of the entities described in Section 10927, with regard to that basin or subbasin, agrees to perform groundwater monitoring functions in accordance with this part.

10934. Nothing in this part provides any new or additional authority to any entity described in Section 10927 to do either of the following:

(a) To enter private property without the consent of the property owner.

(b) To require a private property owner to submit groundwater monitoring information to the entity.

10935. (a) A voluntary cooperative groundwater monitoring association may be formed for the purposes of monitoring groundwater elevations in accordance with this part. The association may be established by contract, a joint powers agreement, a memorandum of agreement, or other form of agreement deemed acceptable by the department.

(b) Upon notification to the department by one or more entities that seek to form a voluntary cooperative groundwater monitoring association, the department shall work cooperatively with the interested parties to facilitate the formation of the association.

(c) The contract or agreement shall include all of the following:

(1) The names of the participants.

(2) The boundaries of the area covered by the agreement.

(3) The name or names of the parties responsible for meeting the requirements of this part.

(4) The method of recovering the costs associated with meeting the requirements of this part.

(5) Other provisions that may be required by the department.

10936. Costs incurred by the department pursuant to this chapter may be funded from unallocated bond revenues pursuant to paragraph (12) of subdivision (a) of Section 75027 of the Public Resources Code, to the extent those funds are available for those purposes.

SEC. 70. Section 12924 of the Water Code is repealed.

~~12924. (a) The department shall, in conjunction with other public agencies, conduct an investigation of the state's groundwater basins. The department shall identify the state's groundwater basins~~

~~on the basis of geological and hydrological conditions and consideration of political boundary lines whenever practical. The department shall also investigate existing general patterns of groundwater pumping and groundwater recharge within such basins to the extent necessary to identify basins which are subject to critical conditions of overdraft.~~

~~(b) The department shall report its findings to the Governor and the Legislature not later than January 1, 1980.~~

SEC. 71. Section 12924 is added to the Water Code, to read:

12924. (a) The department, in conjunction with other public agencies, shall conduct an investigation of the state's groundwater basins. The department shall identify the state's groundwater basins on the basis of geological and hydrological conditions and consideration of political boundary lines whenever practical. The department shall also investigate existing general patterns of groundwater pumping and groundwater recharge within those basins to the extent necessary to identify basins that are subject to critical conditions of overdraft.

(b) The department shall report its findings to the Governor and the Legislature not later than January 1, 2012, and thereafter in years ending in 5 or 0.

SEC. 72. Division 26.4 (commencing with Section 79400) of the Water Code is repealed.

SEC. 73. Division 35 (commencing with Section 85000) is added to the Water Code, to read:

DIVISION 35. Sacramento-San Joaquin Delta Reform Act of 2009

PART 1. General Provisions

CHAPTER 1. SHORT TITLE AND LEGISLATIVE FINDINGS

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

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

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

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

(c) By enacting this division, it is the intent of the Legislature to provide for the sustainable management of the Sacramento-San Joaquin Delta ecosystem, to provide for a more reliable water supply for the state, to protect and enhance the quality of water supply from the Delta, and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan.

85002. The Legislature finds and declares that the Sacramento-San Joaquin Delta, referred to as "the Delta" in this division, is a critically important natural resource for California and the nation.

It serves Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America.

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

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

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

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

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

(a) The economies of major regions of the state depend on the ability to use water within the Delta watershed or to import water from the Delta watershed. More than two-thirds of the residents of the state and more than two million acres of highly productive farm land receive water exported from the Delta watershed.

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

CHAPTER 2. DELTA POLICY

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

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

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

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

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

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

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

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

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

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

85022. (a) It is the intent of the Legislature that state and local land use actions be consistent with the Delta Plan. This section's findings, policies, and goals apply to Delta land use planning and development.

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

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

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

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

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

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

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

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

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

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

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

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

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

85023. The longstanding constitutional principle of reasonable

use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta.

CHAPTER 3. MISCELLANEOUS PROVISIONS

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

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

(c) Unless otherwise expressly provided, nothing in this division supersedes, reduces, or otherwise affects existing legal protections, both procedural and substantive, relating to the board's regulation of diversion and use of water, including, but not limited to, the protection provided to municipal interests by Sections 106 and 106.5, and changes in water rights. Nothing in this division expands or otherwise alters the board's existing authority to regulate the diversion and use of water or the courts' existing concurrent jurisdiction over California water rights.

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

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

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

(c) The Fish and Game Code.

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

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

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

(g) Section 1702.

(h) The application of the public trust doctrine.

(i) Any water right.

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

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

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

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

(b) The council shall be the successor to and shall assume from the California Bay-Delta Authority all of the administrative rights,

abilities, obligations, and duties of that authority.

(c) The council shall have possession and control of all records, papers, equipment, supplies, contracts, leases, agreements, and other property, real or personal, connected with the administration of Division 26.4 (commencing with Section 79400), as that division read on December 31, 2009, or held for the benefit or use of the California Bay-Delta Authority.

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

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

CHAPTER 4. DEFINITIONS

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.

85052. "Adaptive management" means a framework and flexible decisionmaking process for ongoing knowledge acquisition, monitoring, and evaluation leading to continuous improvement in management planning and implementation of a project to achieve specified objectives.

85053. "Bay Delta Conservation Plan" or "BDCP" means a multispecies conservation plan.

85054. "Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, 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.

85057.5. (a) "Covered action" means a plan, program, project, or activity that meets all of the following conditions:

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

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

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

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

(b) "Covered action" does not include any of the following:

(1) A regulatory action of a state agency.

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

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

(4) Any plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization under Section 65080 of the Government Code has determined is consistent with either a sustainable communities strategy or an alternative planning strategy that the State Air Resources Board has determined would, if implemented, achieve the greenhouse gas emission reduction targets established by that board pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code. For purposes of this section, "consistent with" means consistent with the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, as applicable, and any infrastructure necessary to support the plan, program, project, or activity.

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

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

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

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

85058. "Delta" means the Sacramento-San Joaquin Delta as defined in Section 12220 and the Suisun Marsh, as defined in Section 29101 of the Public Resources Code.

85059. "Delta Plan" means the comprehensive, long-term management plan for the Delta 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.

85064. "Public water agency" means a public entity, as defined in Section 514, that provides water service, as defined in Section 515.

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

85067. "Strategic Plan" means both the "Delta Vision Strategic Plan" issued by the Delta Vision Blue Ribbon Task Force on October 17, 2008, and the "Delta Vision Implementation Report" adopted by the

Delta Vision Committee and dated December 31, 2008.

PART 2. Early Actions

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

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

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

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

85085. The department shall do all of the following:

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

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

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

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

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

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

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

informational proceeding. The flow criteria shall not be considered predecisional with regard to any subsequent board consideration of a permit, including any permit in connection with a final BDCP.

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

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

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

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

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

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

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

(a) The costs of the environmental review, planning, design, construction, mitigation, and operation and maintenance of any new Delta water conveyance facility. The costs of mitigation include the costs of mitigation pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code in connection with the construction, operation, and maintenance of any new Delta water conveyance facility.

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

PART 3. DELTA GOVERNANCE

CHAPTER 1. DELTA STEWARDSHIP COUNCIL

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

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

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

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

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

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

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

(2) The Chairperson of the Delta Protection Commission shall serve as an ex officio member.

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

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

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

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

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

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

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

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

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

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

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

the state.

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

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

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

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

85210. The council has all of the following powers:

(a) To sue or be sued.

(b) To enter into contracts.

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

(d) To delegate administrative functions to council staff.

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

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

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

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

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

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

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

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

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

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

CHAPTER 3. CONSISTENCY OF STATE AND LOCAL PUBLIC AGENCY ACTIONS

85225. A state or local public agency that proposes to undertake

a covered action, prior to initiating the implementation of that covered action, shall prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and shall submit that certification to the council.

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

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

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

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

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

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

85225.25. After a hearing on an appealed action, the council shall make specific written findings either denying the appeal or remanding the matter to the state or local public agency for reconsideration of the covered action based on the finding that the certification of consistency is not supported by substantial evidence in the record before the state or local public agency that filed the certification. Upon remand, the state or local agency may determine whether to proceed with the covered action. If the agency decides to proceed with the action or with the action as modified to respond to the findings of the council, the agency shall, prior to proceeding with the action, file a revised certification of consistency that addresses each of the findings made by the council and file that revised certification with the council.

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

CHAPTER 4. DELTA WATERMASTER

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

(b) The board shall adopt internal procedures delegating authority

to the Delta Watermaster. The Delta Watermaster shall exercise the board's authority to provide timely monitoring and enforcement of board orders and permit terms and conditions. The Delta Watermaster's delegated authority shall include authority to require monitoring and reporting, authority for approvals delegated to an officer or employee of the board by the terms of a water right permit or license, authority to approve temporary urgency changes pursuant to Chapter 6.6 (commencing with section 1435) of Part 2 of Division 2, and authority to issue a notice of proposed cease and desist order or administrative civil liability complaint. The Delta Watermaster's authority shall be limited to diversions in the Delta and the application and enforcement of the board's requirements that apply to conditions in the Delta.

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

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

CHAPTER 5. DELTA INDEPENDENT SCIENCE BOARD AND DELTA SCIENCE PROGRAM

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

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

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

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

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

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

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

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

(B) Have a strong record of scientific research and publication in peer-reviewed scientific journals in a field related to water or

ecosystem management.

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

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

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

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

(4) The mission of the Delta Science Program shall be to provide the best possible unbiased scientific information to inform water and environmental decisionmaking in the Delta. That mission shall be carried out through funding research, synthesizing and communicating scientific information to policymakers and decisionmakers, promoting independent scientific peer review, and coordinating with Delta agencies to promote science-based adaptive management. The Delta Science Program shall assist with development and periodic updates of the Delta Plan's adaptive management program.

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

PART 4. COMPREHENSIVE DELTA PLANNING

CHAPTER 1. THE DELTA PLAN

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

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

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

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

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

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

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

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

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

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

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

(2) The commission shall include in the proposal a regional economic plan to support increased investment in agriculture, recreation, tourism, and other resilient land uses in the Delta. The regional economic plan shall include detailed recommendations for the administration of the Delta Investment

Fund created by Section 29778.5 of the Public Resources Code.

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

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

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

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

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

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

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

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

(2) Functional corridors for migratory species.

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

(4) Reduced threats and stresses on the Delta ecosystem.
(5) Conditions conducive to meeting or exceeding the goals in existing species recovery plans and state and federal goals with respect to doubling salmon populations.
(d) The Delta Plan shall include measures to promote a more reliable water supply that address all of the following:
(1) Meeting the needs for reasonable and beneficial uses of water.

(2) Sustaining the economic vitality of the state.
(3) Improving water quality to protect human health and the environment.
(e) The following subgoals and strategies for restoring a healthy ecosystem shall be included in the Delta Plan:
(1) Restore large areas of interconnected habitats within the Delta and its watershed by 2100.
(2) Establish migratory corridors for fish, birds, and other animals along selected Delta river channels.
(3) Promote self-sustaining, diverse populations of native and valued species by reducing the risk of take and harm from invasive species.
(4) Restore Delta flows and channels to support a healthy estuary and other ecosystems.
(5) Improve water quality to meet drinking water, agriculture, and ecosystem long-term goals.
(6) Restore habitat necessary to avoid a net loss of migratory bird habitat and, where feasible, increase migratory bird habitat to promote viable populations of migratory birds.
(f) The council shall consider, for incorporation into the Delta Plan, actions designed to implement the subgoals and strategies described in subdivision (e).
(g) In carrying out this section, the council shall make use of the best available science.
(h) The Delta Plan shall include recommendations regarding state agency management of lands in the Delta.
85303. The Delta Plan shall promote statewide water conservation, water use efficiency, and sustainable use of water.
85304. The Delta Plan shall promote options for new and improved infrastructure relating to the water conveyance in the Delta, storage systems, and for the operation of both to achieve the coequal goals.

85305. (a) The Delta Plan shall attempt to reduce risks to people, property, and state interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and strategic levee investments.
(b) The council may incorporate into the Delta Plan the emergency preparedness and response strategies for the Delta developed by the California Emergency Management Agency pursuant to Section 12994.5.
85306. The council, in consultation with the Central Valley Flood Protection Board, shall recommend in the Delta Plan priorities for state investments in levee operation, maintenance, and improvements in the Delta, including both levees that are a part of the State Plan of Flood Control and nonproject levees.
85307. (a) The Delta Plan may identify actions to be taken outside of the Delta, if those actions are determined to significantly reduce flood risks in the Delta.
(b) The Delta Plan may include local plans of flood protection.
(c) The council, in consultation with the Department of Transportation, may address in the Delta Plan the effects of climate change and sea level rise on the three state highways that cross the Delta.

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

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

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

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

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

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

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

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

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

CHAPTER 2. BAY DELTA CONSERVATION PLAN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 3. OTHER PLANS FOR THE DELTA

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

SEC. 74. (a) Pursuant to Section 75026 of the Public Resources Code, the sum of twenty-eight million dollars ($28,000,000) is hereby appropriated to the Department of Water Resources for expenditure by that department pursuant to paragraph (12) of subdivision (a) of

Section 75027 of the Public Resources Code for the Two-Gates Fish Protection Demonstration Program managed by the United States Bureau of Reclamation. The Department of Water Resources shall expend such funds only consistent with the requirements of Sections 75026 and 75027 of the Public Resources Code.

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

SEC. 75. Item 3940-001-0439 of Section 2.00 of the Budget Act of 2009 is amended to read:

3940-001-0439--For support of State Water Resources Control Board..... 238,113,000

Schedule:

(1)	10-Water Quality....	439,650,000
(2)	20-Water Rights.....	~~11,658,000~~ *15,408,000*
(3)	30.01-Administration.....	~~20,886,000~~ *21,059,000*
(4)	30.02-Distributed Administration.....	~~20,886,000~~ *-21,059,000*
(5)	Reimbursements.....	-8,932,000
(6)	Amount payable from the General Fund (Item 3940-001-0001).....	-40,575,000
(7)	Amount payable from the Unified Program Account (Item 3940-001-0028).....	-621,000
(8)	Amount payable from the Waste Discharge Permit Fund (Item 3940-001-0193).....	-78,768,000
(9)	Amount payable from the Marine Invasive Species Control Fund (Item 3940-001-0212).....	-103,000
(10)	Amount payable from the Public Resources Account, Cigarette and Tobacco Products Surtax Fund (Item 3940-001-0235).....	-2,039,000
(11)	Amount payable from the Integrated Waste Management Account, Integrated Waste Management Fund (Item 3940-001-	

	0387).....	-6,757,000
(12)	Amount payable from the Water Recycling Subaccount (Item 3940-001-0419).....	-1,150,000
(13)	Amount payable from the Drainage Management Subaccount (Item 3940-001-0422).....	-515,000
(14)	Amount payable from the Seawater Intrusion Control Subaccount (Item 3940-001-0424).....	-222,000
(15)	Amount payable from the Underground Storage Tank Tester Account (Item 3940-001-0436).....	-64,000
(16)	Amount payable from the 1984 State Clean Water Bond Fund (Item 3940-001-0740).....	-322,000
(17)	Amount payable from the Federal Trust Fund (Item 3940-001-0890).....	-51,353,000
(18)	Amount payable from the Water Rights Fund (Item 3940-001-3058).....	~~-7,447,000~~
		-11,197,000
(19)	Amount payable from the Watershed Protection Subaccount (Item 3940-001-6013).....	-250,000
(20)	Amount payable from the Santa Ana River Watershed Subaccount (Item 3940-001-6016).....	-250,000
(21)	Amount payable from the Lake Elsinore and San Jacinto Watershed Subaccount (Item 3940-001-6017).....	-150,000
(22)	Amount payable from the Nonpoint Source Pollution Control Subaccount (Item 3940-001-6019).....	-200,000
(23)	Amount payable from the State Revolving Fund Loan Subaccount (Item	

3940-001-6020)..... -81,000

(24) Amount payable from the Wastewater Construction Grant Subaccount (Item 3940-001-6021)..... -23,000

(25) Amount payable from the Coastal Nonpoint Source Control Subaccount (Item 3940-001-6022)..... -150,000

(26) Amount payable from the Water Security, Clean Drinking Water, Coastal and Beach Protection Fund of 2002 (Item 3940-001-6031)..... -3,000,000

(27) Amount payable from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Fund of 2006 (Item 3940-001-6051)..... -4,073,000

(28) Amount payable from the Petroleum Underground Storage Tank Financing Account (Item 3940-001-8026)..... -618,000

(29) Amount payable from the State Water Pollution Control Revolving Fund Administration Fund (Item 3940-001-9739)..... -5,532,000

Provisions:

1. Notwithstanding any other provision of law, upon approval and order of the Director of Finance, the State Water Resources Control Board may borrow sufficient funds for cash purposes from special funds that otherwise provide support for the board. Any such loans are to be repaid with interest at the rate earned in the Pooled Money Investment Account.

2. Of the amount contained in Schedule (2), $3,750,000 shall be used to fund 25.0 permanent positions in support of water

rights enforcement.

SEC. 76. Item 3940-001-3058 of Section 2.00 of the Budget Act of 2009 is amended to read:

3940-001-3058--For support of State Water Resources Control Board, for payment to Item 3940-001-0439, payable from the Water Rights Fund..... *11,197,00* ~~7,447,00~~ 0

Provisions:

1. The increase in appropriation in this item shall be paid only from the fee revenue in the Water Rights Fund.

SEC. 77. Commencing with the 2010-11 fiscal year, and notwithstanding Section 13340 of the Government Code, three million seven hundred fifty thousand dollars ($3,750,000) is hereby continuously appropriated, without regard to fiscal years, on an annual basis, only from the fee revenue in the Water Rights Fund to the State Water Resources Control Board for the purposes of funding 25.0 permanent water right enforcement positions, as provided in Schedule (2) of Item 3940-001-0439 of Section 2.00 of the Budget Act of 2009, as amended by this act.

SEC. 78. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 79. This act shall take effect only if ____ of the 2009-10 Seventh Extraordinary Session of the Legislature is enacted and becomes operative.

EXHIBIT 5

BILL NUMBER: SBX7 1 CHAPTERED

BILL TEXT

CHAPTER 5

FILED WITH SECRETARY OF STATE NOVEMBER 12, 2009

APPROVED BY GOVERNOR NOVEMBER 12, 2009

PASSED THE SENATE NOVEMBER 4, 2009

PASSED THE ASSEMBLY NOVEMBER 3, 2009

AMENDED IN ASSEMBLY NOVEMBER 3, 2009

AMENDED IN SENATE NOVEMBER 2, 2009

AMENDED IN SENATE OCTOBER 29, 2009

INTRODUCED BY Senators Simitian and Steinberg

OCTOBER 23, 2009

An act to amend Sections 29702, 29725, 29727, 29733, 29735, 29735.1, 29738, 29741, 29751, 29752, 29754, 29756.5, 29763, 29771, and 29780 of, to add Sections 29703.5, 29722.5, 29722.7, 29728.5, 29759, 29773, 29773.5, and 29778.5 to, to add Division 22.3 (commencing with Section 32300) to, to repeal Section 29762 of, and to repeal and add Sections 29736, 29739, 29753, 29761, 29761.5, and 29764 of, the Public Resources Code, and to add Division 35 (commencing with Section 85000) to, and to repeal Division 26.4 (commencing with Section 79400) of, the Water Code, relating to public resources, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1, Simitian. Public resources.

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

This bill would revise and recast the provisions of the Delta Protection Act to, among other things, reduce the number of commission members from 23 to 15 members, as specified. The bill would require the commission to appoint at least one advisory committee consisting of representatives from specified entities to provide input regarding the diverse interests within the Delta. The bill would require the commission to adopt, not later than July 1, 2011, an economic sustainability plan containing specified elements and would require the commission to review and, as determined to be necessary, amend the plan every 5 years.

The bill would require the commission to prepare and submit to the Legislature, by July 1, 2010, recommendations on the potential expansion of or change to the primary zone or the Delta.

The bill would establish the Delta Investment Fund in the State Treasury. Moneys in the fund, upon appropriation by the Legislature, would be required to be expended by the commission to implement the regional economic sustainability plan.

The bill would establish in the Natural Resources Agency the

Sacramento-San Joaquin Delta Conservancy. The conservancy would be required to act as a primary state agency to implement ecosystem restoration in the Delta and to support efforts that advance environmental protection and the economic well-being of Delta residents. The bill would specify the composition of the conservancy and grant certain authority to the conservancy, including the authority to acquire real property interests from willing sellers or transferors. The conservancy would be required to use conservation easements to accomplish ecosystem restoration whenever feasible. The conservancy would be required to prepare and adopt a strategic plan to achieve the goals of the conservancy. The strategic plan would be required to be consistent with certain plans. The bill would establish the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury. Moneys in the fund would be available, upon appropriation, to finance projects, including ecosystem restoration and economic sustainability projects.

(2) Existing law requires the Secretary of the Natural Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill would enact the Sacramento-San Joaquin Delta Reform Act of 2009. The bill would establish the Delta Stewardship Council as an independent agency of the state. The council would be required to consist of 7 members appointed in a specified manner. The bill would specify the powers of the council. The bill would require the council, on or before January 1, 2012, to develop, adopt, and commence implementation of a comprehensive management plan for the Delta (Delta Plan), meeting specified requirements. The bill would require a state or local public agency that proposes to undertake certain proposed actions that will occur within the boundaries of the Delta or the Suisun Marsh to prepare, and submit to the council, a specified written certification of consistency with the Delta Plan prior to taking those actions. By imposing these requirements on a local public agency, the bill would impose a state-mandated local program. The bill would establish an appeal process by which a person may claim that a proposed action is inconsistent with the Delta Plan, as prescribed.

The bill would impose requirements on the Department of Water Resources in connection with the preparation of a specified Bay Delta Conservation Plan (BDCP). The BDCP would only be permitted to be incorporated in the Delta Plan if certain requirements are met.

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

The bill would require the State Water Resources Control Board to establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010. The bill would require the board to develop new flow criteria for the Delta ecosystem, as specified. The board would be required to submit those determinations to the council. The bill would require the board, in consultation with the council, to appoint a special master for the Delta, referred to as the Delta Watermaster. The bill would grant specified authority to the Delta Watermaster.

(3) The California Bay-Delta Authority Act establishes the California Bay-Delta Authority in the Resources Agency. The act requires the authority and the implementing agencies to carry out programs, projects, and activities necessary to implement the Bay-Delta Program, defined to mean those projects, programs,

commitments, and other actions that address the goals and objectives of the CALFED Bay-Delta Programmatic Record of Decision, dated August 28, 2000, or as it may be amended.

This bill would repeal that act. The bill would impose requirements on the council in connection with the repeal of that act.

(4) Existing law, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, an initiative bond act approved by the voters at the November 7, 2006, statewide general election, authorizes the issuance of bonds in the amount of $5,388,000,000, of which $1,000,000,000 is made available to the Department of Water Resources, upon appropriation therefor, to meet the long term water needs of the state. Eligible projects are required to implement integrated regional water management plans and include fisheries restoration and protection projects. A portion of these funds may be expended directly or granted by the department to address multiregional needs or issues of statewide significance.

This bill would appropriate $28,000,000 of these funds to the department for the department to expend, as specified, on the Two-Gates Fish Protection Demonstration Program managed by the United States Bureau of Reclamation. The bill would make a statement of legislative intent to finance the activities of the Delta Stewardship Council and the Sacramento-San Joaquin Delta Conservancy from funds made available pursuant to the Disaster Preparedness and Flood Prevention Bond Act of 2006 and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Bond Act of 2006.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(6) The bill would take effect only if SB 6 and SB 7 of the 2009-10 7th Extraordinary Session of the Legislature are enacted and become effective.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 29702 of the Public Resources Code is amended to read:

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

(a) Achieve the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

(b) Protect, maintain, and, where possible, enhance and restore the overall quality of the Delta environment, including, but not limited to, agriculture, wildlife habitat, and recreational activities.

(c) Ensure orderly, balanced conservation and development of Delta land resources.

(d) Improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety.

SEC. 2. Section 29703.5 is added to the Public Resources Code, to read:

29703.5. The Legislature further finds and declares both of the following:

(a) The Delta Protection Commission created pursuant to Section 29735 provides an existing forum for Delta residents to engage in decisions regarding actions to recognize and enhance the unique cultural, recreational, and agricultural resources of the Delta. As such, the commission is the appropriate agency to identify and provide recommendations to the Delta Stewardship Council on methods of preserving the Delta as an evolving place as the Delta Stewardship Council develops and implements the Delta Plan.

(b) There is a need for the five Delta counties to establish and implement a resources management plan for the Delta and for the Delta Stewardship Council to consider that plan and recommendations of the commission in the adoption of the Delta Plan.

SEC. 3. Section 29722.5 is added to the Public Resources Code, to read:

29722.5. "Delta Plan" means the plan adopted by the Delta Stewardship Council pursuant to Section 85300 of the Water Code.

SEC. 4. Section 29722.7 is added to the Public Resources Code, to read:

29722.7. "Economic sustainability plan" means the plan adopted by the commission pursuant to Section 29759.

SEC. 5. Section 29725 of the Public Resources Code is amended to read:

29725. "Local government" means the Counties of Contra Costa, Sacramento, San Joaquin, Solano, and Yolo, and the Cities of Sacramento, Stockton, Tracy, Antioch, Pittsburg, Osladin, Lathrop, Brentwood, West Sacramento, and Oakley, and any other cities that may be incorporated in the future in the primary zone.

SEC. 6. Section 29727 of the Public Resources Code is amended to read:

29727. "Port" means the Port of Sacramento and the Port of Stockton, including all the land owned or leased by those ports, or potential sites identified in the Delta county general plans as of January 1, 2010, and otherwise authorized by law.

SEC. 7. Section 29728.5 is added to the Public Resources Code, to read:

29728.5. "Resources management plan" means the plan adopted by the commission pursuant to Section 29760.

SEC. 8. Section 29733 of the Public Resources Code is amended to read:

29733. "Unincorporated towns" means the communities of Walnut Grove, Clarksburg, Courtland, Hood, Locke, Knightsen, Collinsville, and Ryde.

SEC. 9. Section 29735 of the Public Resources Code is amended to read:

29735. There is hereby created the Delta Protection Commission consisting of 15 members as follows:

(a) One member of the board of supervisors, or his or her designee, of each of the five counties within the Delta whose supervisorial district is within the primary zone shall be appointed by the board of supervisors of each of those respective counties.

(b) (1) Two elected city council members shall be selected and appointed by city selection committees, from the appropriate regions specified in subparagraphs (A) and (B), one in each of the following areas:

(A) One from the south Delta, consisting of the County of San Joaquin.

(B) One from the west Delta, from either the County of Contra Costa or the County of Solano, on a rotating basis.

(2) One elected city council member shall be selected and appointed by city selection committees, from regional and area councils of government from the north Delta, consisting of the Counties of Yolo and Sacramento.

(3) A city council member appointed pursuant to this subdivision may select a designee for purposes of this subdivision.

(4) Notwithstanding Section 29736, the term of office of the members selected pursuant to this subdivision shall be two years.

(c) One member each from the board of directors of three different reclamation districts that are located within the primary zone who are residents of the Delta, and who are elected by the trustees of reclamation districts pursuant to paragraphs (1), (2), and (3). Each reclamation district may nominate one director to be a member. The member from an area described in paragraph (1), (2), or (3) shall be selected from among the nominees by a majority vote of the reclamation districts in that area. A member selected pursuant to this subdivision may select a designee for this purpose. For the purposes of this section, each reclamation district shall have one vote. Reclamation district members shall consist of the following:

(1) One member from the area of the North Delta Water Agency as described in Section 9.1 of the North Delta Water Agency Act (Chapter 283 of the Statutes of 1973).

(2) One member from an area including the west Delta consisting of the area of Contra Costa County within the Delta and within the Central Delta Water Agency as described in Section 9.1 of the Central Delta Water Agency Act (Chapter 1133 of the Statutes of 1973).

(3) One member from the area of the South Delta Water Agency as described in Section 9.1 of the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973).

(d) The Secretary of Food and Agriculture, or the secretary's sole designee.

(e) The executive officer of the State Lands Commission, or the executive officer's sole designee.

(f) The Secretary of the Natural Resources Agency, or his or her sole designee.

(g) The Secretary of Business, Transportation and Housing, or his or her sole designee.

SEC. 10. Section 29735.1 of the Public Resources Code is amended to read:

29735.1. (a) A member of the commission described in subdivision (a) of Section 29735 may, subject to the confirmation of his or her appointing power, appoint an alternate to represent him or her at a commission meeting. An alternate may serve prior to confirmation for a period not to exceed 90 days from the date of appointment, unless and until confirmation is denied.

(b) The alternate shall serve at the pleasure of the member who appoints him or her and shall have all of the powers and duties of a member of the commission, except that the alternate shall only participate and vote in a meeting in the absence of the member who appoints him or her. All provisions of law relating to conflicts of interest that are applicable to a member shall apply to an alternate. If a member has, or is known to have, a conflict of interest on any matter, the member's alternate is ineligible to vote on that matter.

SEC. 11. Section 29736 of the Public Resources Code is repealed.

SEC. 12. Section 29736 is added to the Public Resources Code, to read:

29736. The appointed members of the commission shall serve at the pleasure of their appointing entities.

SEC. 13. Section 29738 of the Public Resources Code is amended to read:

29738. The office of an appointed member of the commission is vacated upon the loss of any qualification required for appointment, and in that event the appointing authority shall appoint a successor within 30 days of the occurrence of the vacancy.

SEC. 14. Section 29739 of the Public Resources Code is repealed.

SEC. 15. Section 29739 is added to the Public Resources Code, to read:

29739. (a) The commission, during the first meeting of the commission after January 1, 2010, shall elect from among the members identified in subdivision (a) of Section 29735 a chairperson who shall serve for one year.

(b) Subsequent chairpersons shall serve for two years and shall be elected from among the members identified in subdivision (a) of Section 29735.

(c) The chairperson shall serve as a voting member of the Delta Stewardship Council.

SEC. 16. Section 29741 of the Public Resources Code is amended to read:

29741. The time and place of the first meeting of the commission, on and after January 1, 2010, shall be prescribed by the Governor, but in no event shall it be scheduled for a date later than January 31, 2010. All meetings after the first meeting shall be held in a city within the Delta.

SEC. 17. Section 29751 of the Public Resources Code is amended to read:

29751. A majority of the voting members of the commission shall constitute a quorum for the transaction of the business of the commission. A majority vote of the voting membership shall be required to take action with respect to any matter unless otherwise specified in this division. The vote of each member shall be individually recorded.

SEC. 18. Section 29752 of the Public Resources Code is amended to read:

29752. The commission shall adopt its own rules, regulations, and procedures necessary for its organization and operation, and shall conduct its meetings in compliance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 19. Section 29753 of the Public Resources Code is repealed.

SEC. 20. Section 29753 is added to the Public Resources Code, to read:

29753. (a) The commission shall appoint at least one advisory committee to provide recommendations regarding the diverse interests within the Delta. At a minimum, the advisory committees shall include representatives of state agencies and other stakeholders with interests in the Delta's ecosystem, water supply, and socioeconomic sustainability, including, but not limited to, its recreational, agricultural, flood control, environmental, and water resources, and state, local, and utility infrastructure. The commission shall encourage participation of various federal agencies, including the United States Bureau of Reclamation, the United States Fish and Wildlife Service, the United States Army Corps of Engineers, and others as appropriate.

(b) The commission may appoint committees from its membership or may appoint additional advisory committees from members of other interested public agencies and private groups.

(c) The commission shall seek advice and recommendations from advisory committees appointed by local government that are involved in subject matters affecting the Delta.

SEC. 21. Section 29754 of the Public Resources Code is amended to read:

29754. The commission shall establish and maintain an office within the Delta or the City of Rio Vista, and for this purpose the commission may rent or own property and equipment. Any rule, regulation, procedure, plan, or other record of the commission which is of such a nature as to constitute a public record under state law shall be available for inspection and copying pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 22. Section 29756.5 of the Public Resources Code is amended to read:

29756.5. The commission may act as the facilitating agency for the implementation of any joint habitat restoration or enhancement programs located within the primary zone of the Delta, including, but not limited to, a national heritage area designation in the Delta.

SEC. 23. Section 29759 is added to the Public Resources Code, to read:

29759. (a) Not later than July 1, 2011, the commission shall prepare and adopt, by a majority vote of the membership of the commission, an economic sustainability plan. The economic sustainability plan shall include information and recommendations that inform the Delta Stewardship Council's policies regarding the socioeconomic sustainability of the Delta region.

(b) The economic sustainability plan shall include, but not be limited to, all of the following:

(1) Public safety recommendations, such as flood protection recommendations.

(2) The economic goals, policies, and objectives in local general plans and other local economic efforts, including recommendations on continued socioeconomic sustainability of agriculture and its infrastructure and legacy communities in the Delta.

(3) Comments and recommendations to the Department of Water Resources concerning its periodic update of the flood management plan for the Delta.

(4) Identification of ways to encourage recreational investment along the key river corridors, as appropriate.

SEC. 24. Section 29761 of the Public Resources Code is repealed.

SEC. 25. Section 29761 is added to the Public Resources Code, to read:

29761. The commission shall adopt, by a majority vote, the economic sustainability plan and each plan update after at least three public hearings, with at least one hearing held in a community in the north Delta, one hearing in the south Delta, and one hearing in the west Delta.

SEC. 26. Section 29761.5 of the Public Resources Code is repealed.

SEC. 27. Section 29761.5 is added to the Public Resources Code, to read:

29761.5. (a) The commission shall review, and, as determined to be necessary, amend the economic sustainability plan every five years on or before December 31 in years ending in six or one.

(b) The commission shall transmit copies of the economic sustainability plan and any subsequent amendments to the Governor, Legislature, each local government as defined in Section 29725, and Delta Stewardship Council within 60 days of adoption or amendment.

Within 180 days of the commission's adoption or amendment of the economic sustainability plan, the Delta Stewardship Council shall review the economic sustainability plan for consistency with the Delta Plan.

SEC. 28. Section 29762 of the Public Resources Code is repealed.

SEC. 29. Section 29763 of the Public Resources Code is amended to read:

29763. Within 180 days from the date of the adoption of the resources management plan or any amendments, changes, or updates, to the resources management plan by the commission, each local government shall submit to the commission proposed amendments to its general plan that are intended to make the general plan consistent with the resources management plan with respect to land located within the primary zone.

SEC. 30. Section 29764 of the Public Resources Code is repealed.

SEC. 31. Section 29764 is added to the Public Resources Code, to read:

29764. Land use authority granted to the commission by this division is limited to the primary zone, and shall not preempt local government general plans for lands within the secondary zone.

SEC. 32. Section 29771 of the Public Resources Code is amended to read:

29771. After a hearing on an appealed action pursuant to Section 29770, the commission shall either deny the appeal or remand the matter to the local government or local agency for reconsideration, after making specific findings. Upon remand, the local government or local agency shall modify the appealed action and resubmit the matter for review to the commission. A proposed action appealed pursuant to this section shall not be effective until the commission has adopted written findings, based on substantial evidence in the record, that the action is consistent with the resources management plan, the approved portions of local government general plans that implement the resources management plan, and this division.

SEC. 33. Section 29773 is added to the Public Resources Code, to read:

29773. (a) The commission may review and provide comments and recommendations to the Delta Stewardship Council on any significant project or proposed project within the scope of the Delta Plan, including, but not limited to, actions by state and federal agencies, that may affect the unique cultural, recreational, and agricultural values within the primary and secondary zones. Review and comment authority granted to the commission shall include, but is not limited to, all of the following:

(1) Identification of impacts to the cultural, recreational, and agricultural values of the Delta.

(2) Recommendations for actions that may avoid, reduce, or mitigate impacts to the cultural, recreational, and agricultural values of the Delta.

(3) Review of consistency of the project or proposed project with the resources management plan and the Delta Plan.

(4) Identification and recommendation of methods to address Delta community concerns regarding large-scale habitat plan development and implementation.

(b) The council shall take into consideration the recommendations of the commission, including the recommendations included in the economic sustainability plan. If the council, in its discretion, determines that a recommendation of the commission is feasible and consistent with the objectives of the Delta Plan and the purposes of this division, the council shall adopt the recommendation.

SEC. 34. Section 29773.5 is added to the Public Resources Code, to

read:

29773.5. On or before July 1, 2010, the commission shall prepare and submit to the Legislature recommendations regarding the potential expansion of or change to the primary zone or the Delta. The commission shall consider recommendations on the status of all of the following areas:

(a) Rio Vista.

(b) Isleton.

(c) Bethel Island.

(d) Brannan-Andrus Island.

(e) Cosumnes/Mokelumne floodway.

(f) The San Joaquin/South Delta lowlands.

SEC. 35. Section 29778.5 is added to the Public Resources Code, to read:

29778.5. The Delta Investment Fund is hereby created in the State Treasury. Any funds within the Delta Investment Fund shall be available, upon appropriation by the Legislature, to the commission for the implementation of the regional economic sustainability plan, developed pursuant to Section 29759, for the purposes of enhancing Delta communities. The Delta Investment Fund may receive funds from federal, state, local, and private sources.

SEC. 36. Section 29780 of the Public Resources Code is amended to read:

29780. On January 1 of each year, the commission shall submit to the Governor and the Legislature a report describing the progress that has been made in achieving the objectives of this division. The report shall include, but need not be limited to, all of the following:

(a) An evaluation of the effectiveness of the commission in undertaking its functions prescribed in this division, including, but not limited to, its mandates as follows:

(1) Determining the consistency of local general plans with the Delta Plan.

(2) Outcomes of appealed local land use decisions pursuant to Sections 29770 and 29771.

(3) Outcomes of reviews initiated by the commission.

(4) Facilitating regional economic sustainability.

(5) Supporting other regional activities for the enhancement of Delta communities.

(b) An update of the economic sustainability plan, using baseline conditions set forth in the original economic sustainability plan.

(c) The status of the environmental thresholds established by the commission in the original resource management plan.

SEC. 37. Division 22.3 (commencing with Section 32300) is added to the Public Resources Code, to read:

DIVISION 22.3. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY

CHAPTER 1. GENERAL PROVISIONS

32300. This division shall be known, and may be cited, as the Sacramento-San Joaquin Delta Conservancy Act.

32301. The Legislature finds and declares all of the following:

(a) The Sacramento-San Joaquin Delta is a unique natural resource of local, state, and national significance.

(b) At 1,300 square miles, the Delta is the largest estuary on the west coast of North and South America.

(c) Its rivers and labyrinths of sloughs and channels are home to

750 species of plants and wildlife as well as 55 species of fish, provide habitat for 700 native plant and animal species, and are part of the Pacific Flyway.

(d) The Delta contains more than 500,000 acres of agricultural land, with unique soils, and farmers who are creative and utilize innovative agriculture, such as carbon sequestration crops, subsidence reversal crops, wildlife-friendly crops, and crops direct for marketing to the large urban populations nearby.

(e) The Delta and Suisun Marsh provide numerous opportunities for recreation, such as boating, kayaking, fishing, hiking, birding, and hunting. Navigable waterways in the Delta are available for public access and currently make up the majority of recreational opportunities. There is a need for land-based recreational access points including parks, picnic areas, and campgrounds.

(f) The Delta's history is rich with a distinct natural, agricultural, and cultural heritage. It is home to the community of Locke, the only town in the United States built primarily by early Chinese immigrants. Other legacy communities include Bethel Island, Clarksburg, Courtland, Freeport, Hood, Isleton, Knightsen, Rio Vista, Ryde, and Walnut Grove.

(g) The Delta is home to more than 500,000 people and 200,000 jobs, and contributes over thirty-five billion dollars ($35,000,000,000) to the state's economy.

(h) In addition, the Delta provides water to more than 25 million Californians and three million acres of agricultural land. It supports a four hundred billion dollar ($400,000,000,000) economy and is traversed by energy, communications, and transportation facilities vital to the economic health of California.

(i) A Sacramento-San Joaquin Delta Conservancy can support efforts that advance both environmental protection and the economic well-being of Delta residents in a complementary manner, including all of the following:

(1) Protect and enhance habitat and habitat restoration.

(2) Protect and preserve Delta agriculture and working landscapes.

(3) Provide increased opportunities for tourism and recreation.

(4) Promote Delta legacy communities and economic vitality in the Delta in coordination with the Delta Protection Commission.

(5) Increase the resilience of the Delta to the effects of natural disasters such as floods and earthquakes, in coordination with the Delta Protection Commission.

(6) Protect and improve water quality.

(7) Assist the Delta regional economy through the operation of the conservancy's program.

(8) Identify priority projects and initiatives for which funding is needed.

(9) Protect, conserve, and restore the region's physical, agricultural, cultural, historical, and living resources.

(10) Assist local entities in the implementation of their habitat conservation plans (HCPs) and natural community conservation plans (NCCPs).

(11) Facilitate take protection and safe harbor agreements under the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) and the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code) for adjacent landowners and local public agencies.

(12) Promote environmental education.

CHAPTER 2. DEFINITIONS

32310. For the purposes of this division, the following terms have the following meanings:

(a) "Board" means the governing board of the Sacramento-San Joaquin Delta Conservancy.

(b) "Conservancy" means the Sacramento-San Joaquin Delta Conservancy.

(c) "Delta" means the Sacramento-San Joaquin Delta as defined in Section 12220 of the Water Code.

(d) "Fund" means the Sacramento-San Joaquin Delta Conservancy Fund created pursuant to Section 32360.

(e) "Local public agency" means a city, county, special district, or joint powers authority.

(f) "Nonprofit organization" means a private, nonprofit organization that qualifies for exempt status under Section 501(c)(3) of Title 26 of the United States Code and that has among its principal charitable purposes preservation of land for scientific, recreational, scenic, or open-space opportunities, protection of the natural environment, preservation or enhancement of wildlife, preservation of cultural and historical resources, or efforts to provide for the enjoyment of public lands.

(g) "Suisun Marsh" means the area defined in Section 29101 and protected by Division 19 (commencing with Section 29000).

CHAPTER 3. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY

32320. There is in the Natural Resources Agency the Sacramento-San Joaquin Delta Conservancy, which is created as a state agency to work in collaboration and cooperation with local governments and interested parties.

32322. (a) The conservancy shall act as a primary state agency to implement ecosystem restoration in the Delta.

(b) The conservancy shall support efforts that advance environmental protection and the economic well-being of Delta residents, including all of the following:

(1) Protect and enhance habitat and habitat restoration.

(2) Protect and preserve Delta agriculture and working landscapes.

(3) Provide increased opportunities for tourism and recreation in the Delta.

(4) Promote Delta legacy communities and economic vitality in the Delta, in coordination with the Delta Protection Commission.

(5) Increase the resilience of the Delta to the effects of natural disasters such as floods and earthquakes, in coordination with the Delta Protection Commission.

(6) Protect and improve water quality.

(7) Assist the Delta regional economy through the operation of the conservancy's program.

(8) Identify priority projects and initiatives for which funding is needed.

(9) Protect, conserve, and restore the region's physical, agricultural, cultural, historical, and living resources.

(10) Assist local entities in the implementation of their habitat conservation plans (HCPs) and natural community conservation plans (NCCPs).

(11) Facilitate take protection and safe harbor agreements under the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and

Game Code) for adjacent landowners and local public agencies.

(12) Promote environmental education through grant funding.

(c) When implementing subdivision (b), the conservancy shall undertake efforts to enhance public use and enjoyment of lands owned by the public.

CHAPTER 4. GOVERNING BOARD

32330. The board shall consist of 11 voting members and two nonvoting members, appointed or designated as follows:

(a) The 11 voting members of the board shall consist of all of the following:

(1) The Secretary of the Natural Resources Agency, or his or her designee.

(2) The Director of Finance, or his or her designee.

(3) One member of the board or a designee who is appointed by the Contra Costa County Board of Supervisors, who is a resident of that county.

(4) One member of the board or a designee who is appointed by the Sacramento County Board of Supervisors, who is a resident of that county.

(5) One member of the board or a designee who is appointed by the San Joaquin County Board of Supervisors, who is a resident of that county.

(6) One member of the board or a designee who is appointed by the Solano County Board of Supervisors, who is a resident of that county.

(7) One member of the board or a designee who is appointed by the Yolo County Board of Supervisors, who is a resident of that county.

(8) Two public members appointed by the Governor, subject to confirmation by the Senate.

(9) One public member appointed by the Senate Committee on Rules.

(10) One public member appointed by the Speaker of the Assembly.

(b) The two nonvoting members shall consist of a Member of the Senate, appointed by the Senate Committee on Rules, and a Member of the Assembly, appointed by the Speaker of the Assembly. The members appointed under this subdivision shall meet with the conservancy and participate in its activities to the extent that this participation is not incompatible with their positions as Members of the Legislature. The appointed members shall represent a district that encompasses a portion of the Delta.

(c) Ten liaison advisers who shall serve in an advisory, nonvoting capacity shall consist of all of the following:

(1) One representative of the United States Fish and Wildlife Service, designated by the United States Secretary of the Interior.

(2) One representative of the United States National Marine Fisheries Service, designated by the United States Secretary of the Interior.

(3) One representative of the United States Bureau of Reclamation, designated by the United States Secretary of the Interior.

(4) One representative of the United States Army Corps of Engineers, designated by the Commanding Officer, United States Army Corps of Engineers, South Pacific Division.

(5) A designee of the San Francisco Bay Conservation and Development Commission for coordination purposes.

(6) A designee of the State Coastal Conservancy for coordination purposes.

(7) A designee of the Suisun Resource Conservation District for coordination purposes.

(8) A designee of the Central Valley Flood Protection Board.
(9) A designee of the Yolo Basin Foundation.
(10) A designee of the Delta Protection Commission.
(d) The public members appointed by the Governor shall serve for a term of four years, with a two-term limit.
(e) The locally appointed members and alternates shall serve at the pleasure of the appointing board of supervisors.
(f) The public members appointed by the Senate Committee on Rules or the Speaker of the Assembly shall serve for a term of four years, with a two-term limit.
(g) The Members of the Senate and Assembly shall serve at the pleasure of the appointing body.
(h) Alternates may be appointed by the county boards of supervisors.
32332. Annually, the voting members of the board shall elect from among the voting members a chairperson and vice chairperson, and other officers as necessary. If the office of the chairperson or vice chairperson becomes vacant, a new chairperson or vice chairperson shall be elected by the voting members of the board to serve for the remainder of the term. The chairperson shall be selected from among the members specified in paragraphs (3) to (7), inclusive, of subdivision (a) of Section 32330.
32334. A majority of the voting members shall constitute a quorum for the transaction of the business of the conservancy. The board shall not transact the business of the conservancy if a quorum is not present at the time a vote is taken. A decision of the board requires an affirmative vote of six of the voting membership, and the vote is binding with respect to all matters acted on by the conservancy.
32336. The board shall adopt rules and procedures for the conduct of business by the conservancy.
32338. The board may establish advisory boards or committees, hold community meetings, and engage in public outreach.
32340. The board shall establish and maintain a headquarters office within the Delta. The conservancy may rent or own real and personal property and equipment pursuant to applicable statutes and regulations.
32342. The board shall determine the qualifications of, and shall appoint, an executive officer of the conservancy, who shall be exempt from civil service. The board shall employ other staff as necessary to execute the powers and functions provided for in this division.
32344. The board may enter into contracts with private entities and public agencies to procure consulting and other services necessary to achieve the purposes of this division.
32346. The conservancy's expenses for support and administration may be paid from the conservancy's operating budget and any other funding sources available to the conservancy.
32348. The board shall conduct business in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).
32350. The board shall hold its regular meetings within the Delta or the City of Rio Vista.

CHAPTER 5. POWERS, DUTIES, AND LIMITATIONS

32360. (a) Except as specified in Section 32360.5, the jurisdiction and activities of the conservancy are limited to the Delta and Suisun Marsh.

(b) (1) The Sacramento-San Joaquin Delta Conservancy Fund is hereby created in the State Treasury. Moneys in the fund shall be available, upon appropriation by the Legislature, only for the purposes of this division.

(2) Funds provided for ecosystem restoration and enhancement shall be available for ecosystem restoration projects consistent with the conservancy's strategic plan adopted pursuant to Section 32376.

(3) Funds may be allocated to a separate program within the conservancy for economic sustainability in the Delta. The economic sustainability plan adopted pursuant to Section 29759 shall be the basis for the program. Funds provided to the conservancy to implement ecosystem restoration projects pursuant to the Bay Delta Conservation Plan shall only be used for ecosystem restoration purposes.

32360.5. In furtherance of the conservancy's role in implementing the Delta Plan, the conservancy may take or fund an action outside the Delta and Suisun Marsh if the board makes all of the following findings:

(a) The project implements the ecosystem goals of the Delta Plan.

(b) The project is consistent with the requirements of any applicable state and federal permits.

(c) The conservancy has given notice to and reviewed any comments received from affected local jurisdictions and the Delta Protection Commission.

(d) The conservancy has given notice to and reviewed any comments received from any state conservancy where the project is located.

(e) The project will provide significant benefits to the Delta.

32362. The conservancy may engage in partnerships with nonprofit organizations, local public agencies, and landowners.

32363. In implementing this division, the conservancy shall cooperate and consult with the city or county in which a grant is proposed to be expended or an interest in real property is proposed to be acquired, and shall, as necessary or appropriate, coordinate its efforts with other state agencies, in cooperation with the Secretary of the Natural Resources Agency. The conservancy shall, as necessary or appropriate, cooperate and consult with a public water system, levee, flood control, or drainage agency that owns or operates facilities, including lands appurtenant thereto, where a grant is proposed to be expended or an interest in land is proposed to be acquired.

32364. (a) The conservancy may require a grantee to enter into an agreement with the conservancy on terms and conditions specified by the conservancy.

(b) The conservancy may require a cost-share or local funding requirement for a grant. The conservancy may make that cost-share or local funding requirement contingent upon the total amount of funding available, the fiscal resources of the applicant, or urgency of the project. The conservancy may waive cost-share requirements.

(c) The conservancy may fund or award grants for plans and feasibility studies consistent with its strategic plan or the Delta Plan.

(d) The conservancy may seek repayment or reimbursement of funds granted on terms and conditions it deems appropriate. The proceeds of repayment shall be deposited in the fund.

(e) The conservancy may require any funds that exceed the costs of eligible or approved projects or of acquisition to be returned to the conservancy, to be available for expenditure when appropriated by the Legislature.

32364.5. (a) The conservancy may provide grants and loans to state agencies, local public agencies, and nonprofit organizations to

further the goals of the conservancy.

(b) An entity applying for a grant from the conservancy to acquire an interest in real property shall specify all of the following in the grant application:

(1) The intended use of the property.

(2) The manner in which the land will be managed.

(3) How the cost of ongoing operations, maintenance, and management will be provided, including an analysis of the maintaining entity's financial capacity to support those ongoing costs.

(4) Grantees shall demonstrate, where applicable, how they will provide payments in lieu of taxes, assessments, or charges otherwise due to local government.

32365. The conservancy may sue and be sued.

32366. (a) The conservancy may acquire from willing sellers or transferors interests in real property and improve, lease, or transfer interests in real property, in order to carry out the purposes of this division.

(b) The conservancy shall use conservation easements to accomplish ecosystem restoration whenever feasible.

32368. The conservancy may enter into an agreement with a public agency, nonprofit organization, or private entity for the construction, management, or maintenance of facilities authorized by the conservancy.

32370. The conservancy shall not exercise the power of eminent domain.

32372. (a) The conservancy may pursue and accept funds from various sources, including, but not limited to, federal, state, and local funds or grants, gifts, donations, bequests, devises, subventions, grants, rents, royalties, or other assistance and funds from public and private sources.

(b) The conservancy may accept fees levied by others.

(c) The conservancy may create and manage endowments.

(d) All funds received by the conservancy shall be deposited in the fund for expenditure for the purposes of this division.

32376. Within two years of hiring an executive officer, the board shall prepare and adopt a strategic plan to achieve the goals of the conservancy. The plan shall describe its interaction with local, regional, state, and federal land use, recreation, water and flood management, and habitat conservation and protection efforts within and adjacent to the Delta. The strategic plan shall establish priorities and criteria for projects and programs, based upon an assessment of program requirements, institutional capabilities, and funding needs throughout the Delta. The strategic plan shall be consistent with the Delta Plan, the Delta Protection Commission's resources management plan, the Central Valley Flood Protection Plan, the Suisun Marsh Preservation Act of 1977 (Division 19 (commencing with Section 29000)), and the Habitat Management, Preservation and Restoration Plan for the Suisun Marsh.

32378. (a) The conservancy may expend funds and award grants and loans to facilitate collaborative planning efforts and to develop projects and programs that are designed to further the purposes of this division.

(b) The conservancy may provide and make available technical information, expertise, and other nonfinancial assistance to public agencies, nonprofit organizations, and tribal organizations, to support program and project development and implementation.

32380. The conservancy may acquire water or water rights to support the goals of the conservancy.

32381. This division does not grant to the conservancy any of the following:

(a) The power of a city or county to regulate land use.

(b) The power to regulate any activities on land, except as the owner of an interest in the land, or pursuant to an agreement with, or a license or grant of management authority from, the owner of an interest in the land.

(c) The power over water rights held by others.

SEC. 38. Division 26.4 (commencing with Section 79400) of the Water Code is repealed.

SEC. 39. Division 35 (commencing with Section 85000) is added to the Water Code, to read:

DIVISION 35. Sacramento-San Joaquin Delta Reform Act of 2009

PART 1. General Provisions

CHAPTER 1. SHORT TITLE AND LEGISLATIVE FINDINGS

85000. This division shall be known, and may be cited, as the Sacramento-San Joaquin Delta Reform Act of 2009.

85001. The Legislature finds and declares all of the following:

(a) The Sacramento-San Joaquin Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable. Resolving the crisis requires fundamental reorganization of the state's management of Delta watershed resources.

(b) In response to the Delta crisis, the Legislature and the Governor required development of a new long-term strategic vision for managing the Delta. The Governor appointed a Blue Ribbon Task Force to recommend a new "Delta Vision Strategic Plan" to his cabinet committee, which, in turn, made recommendations for a Delta Vision to the Governor and the Legislature on January 3, 2009.

(c) By enacting this division, it is the intent of the Legislature to provide for the sustainable management of the Sacramento-San Joaquin Delta ecosystem, to provide for a more reliable water supply for the state, to protect and enhance the quality of water supply from the Delta, and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan.

85002. The Legislature finds and declares that the Sacramento-San Joaquin Delta, referred to as "the Delta" in this division, is a critically important natural resource for California and the nation. It serves Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America.

85003. The Legislature finds and declares all of the following:

(a) Originally, the Delta was a shallow wetland with water covering the area for many months of the year. Natural levees, created by deposits of sediment, allowed some islands to emerge during the dry summer months. Salinity would fluctuate, depending on the season and the amount of precipitation in any one year, and the species that comprised the Delta ecosystem had evolved and adapted to this unique, dynamic system.

(b) Delta property ownership developed pursuant to the federal Swamp Land Act of 1850, and state legislation enacted in 1861, and as a result of the construction of levees to keep previously seasonal wetlands dry throughout the year. That property ownership, and the

exercise of associated rights, continue to depend on the landowners' maintenance of those nonproject levees and do not include any right to state funding of levee maintenance or repair.

(c) In 1933, the Legislature approved the California Central Valley Project Act, which relied upon the transfer of Sacramento River water south through the Delta and maintenance of a more constant salinity regime by using upstream reservoir releases of freshwater to create a hydraulic salinity barrier. As a result of the operations of state and federal water projects, the natural salinity variations in the Delta have been altered. Restoring a healthy estuarine ecosystem in the Delta may require developing a more natural salinity regime in parts of the Delta.

85004. The Legislature finds and declares all of the following:

(a) The economies of major regions of the state depend on the ability to use water within the Delta watershed or to import water from the Delta watershed. More than two-thirds of the residents of the state and more than two million acres of highly productive farmland receive water exported from the Delta watershed.

(b) Providing a more reliable water supply for the state involves implementation of water use efficiency and conservation projects, wastewater reclamation projects, desalination, and new and improved infrastructure, including water storage and Delta conveyance facilities.

CHAPTER 2. DELTA POLICY

85020. The policy of the State of California is to achieve the following objectives that the Legislature declares are inherent in the coequal goals for management of the Delta:

(a) Manage the Delta's water and environmental resources and the water resources of the state over the long term.

(b) Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place.

(c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.

(d) Promote statewide water conservation, water use efficiency, and sustainable water use.

(e) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.

(f) Improve the water conveyance system and expand statewide water storage.

(g) Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection.

(h) Establish a new governance structure with the authority, responsibility, accountability, scientific support, and adequate and secure funding to achieve these objectives.

85021. The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.

85022. (a) It is the intent of the Legislature that state and local land use actions identified as "covered actions" pursuant to Section 85057.5 be consistent with the Delta Plan. This section's

findings, policies, and goals apply to Delta land use planning and development.

(b) The actions of the council shall be guided by the findings, policies, and goals expressed in this section when reviewing decisions of the commission pursuant to Division 19.5 (commencing with Section 29700) of the Public Resources Code.

(c) The Legislature finds and declares all of the following:

(1) The Delta is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced estuary and wetland ecosystem of hemispheric importance.

(2) The permanent protection of the Delta's natural and scenic resources is the paramount concern to present and future residents of the state and nation.

(3) To promote the public safety, health, and welfare, and to protect public and private property, wildlife, fisheries, and the natural environment, it is necessary to protect and enhance the ecosystem of the Delta and prevent its further deterioration and destruction.

(4) Existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to persons living and working in the Delta.

(d) The fundamental goals for managing land use in the Delta are to do all of the following:

(1) Protect, maintain, enhance, and, where feasible, restore the overall quality of the Delta environment and its natural and artificial resources.

(2) Ensure the utilization and conservation of Delta resources, taking into account the social and economic needs of the people of the state.

(3) Maximize public access to Delta resources and maximize public recreational opportunities in the Delta consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

(4) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the Delta.

(5) Develop new or improved aquatic and terrestrial habitat and protect existing habitats to advance the goal of restoring and enhancing the Delta ecosystem.

(6) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.

85023. The longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta.

CHAPTER 3. MISCELLANEOUS PROVISIONS

85031. (a) This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law. This division does not limit or otherwise affect the application of Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections

12200 to 12220, inclusive.

(b) For the purposes of this division, an area that utilizes water that has been diverted and conveyed from the Sacramento River hydrologic region, for use outside the Sacramento River hydrologic region or the Delta, shall not be deemed to be immediately adjacent thereto or capable of being conveniently supplied with water therefrom by virtue or on account of the diversion and conveyance of that water through facilities that may be constructed for that purpose after January 1, 2010.

(c) Nothing in this division supersedes, limits, or otherwise modifies the applicability of Chapter 10 (commencing with Section 1700) of Part 2 of Division 2, including petitions related to any new conveyance constructed or operated in accordance with Chapter 2 (commencing with Section 85320) of Part 4 of Division 35.

(d) Unless otherwise expressly provided, nothing in this division supersedes, reduces, or otherwise affects existing legal protections, both procedural and substantive, relating to the state board's regulation of diversion and use of water, including, but not limited to, water right priorities, the protection provided to municipal interests by Sections 106 and 106.5, and changes in water rights. Nothing in this division expands or otherwise alters the board's existing authority to regulate the diversion and use of water or the courts' existing concurrent jurisdiction over California water rights.

85032. This division does not affect any of the following:

(a) The Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code).

(b) The California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(c) The Fish and Game Code.

(d) The Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000).

(e) Chapter 8 (commencing with Section 12930) of Part 6 of Division 6.

(f) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(g) Section 1702.

(h) The application of the public trust doctrine.

(i) Any water right.

(j) The liability of the state for flood protection in the Delta or its watershed.

85034. (a) (1) The council shall administer all contracts, grants, easements, and agreements made or entered into by the California Bay-Delta Authority under Division 26.4 (commencing with Section 79400), as that division read on December 31, 2009.

(2) The exercise of the authority described in paragraph (1) is not subject to review or approval by the Department of General Services.

(3) A contract, lease, license, or any other agreement to which the California Bay-Delta Authority is a party is not void or voidable as a result of the implementation of this subdivision, but shall continue in full force and effect until the end of its term.

(b) The council shall be the successor to and shall assume from the California Bay-Delta Authority all of the administrative rights, abilities, obligations, and duties of that authority.

(c) The council shall have possession and control of all records, papers, equipment, supplies, contracts, leases, agreements, and other property, real or personal, connected with the administration of Division 26.4 (commencing with Section 79400), as that division read

on December 31, 2009, or held for the benefit or use of the California Bay-Delta Authority.

(d) The council shall assume from the California Bay-Delta Authority all responsibility to manage, in accordance with Chapter 5 (commencing with Section 85280) of Part 3, the science program element that was required to be undertaken by Division 26.4 (commencing with Section 79400).

(e) Consistent with the responsibilities and duties assumed by the council pursuant to this section, all staff, resources, and funding within the Natural Resources Agency and the Department of Forestry and Fire Protection for the support of the CALFED Bay-Delta Program are hereby transferred to, and may be expended for the purposes of, the council. The executive officer of the council shall confer with the Director of Fish and Game, the director of the department, and the executive director of the board regarding possible reallocation of the staff and resources. The status, position, and rights of any officer or employee shall not be affected by this transfer and all officers and employees shall be retained pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

CHAPTER 4. DEFINITIONS

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.

85052. "Adaptive management" means a framework and flexible decisionmaking process for ongoing knowledge acquisition, monitoring, and evaluation leading to continuous improvement in management planning and implementation of a project to achieve specified objectives.

85053. "Bay Delta Conservation Plan" or "BDCP" means a multispecies conservation plan.

85054. "Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, 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.

85057.5. (a) "Covered action" means a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

(1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.

(2) Will be carried out, approved, or funded by the state or a local public agency.

(3) Is covered by one or more provisions of the Delta Plan.

(4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored

flood control programs to reduce risks to people, property, and state interests in the Delta.

(b) "Covered action" does not include any of the following:

(1) A regulatory action of a state agency.

(2) Routine maintenance and operation of the State Water Project or the federal Central Valley Project.

(3) Regional transportation plans prepared pursuant to Section 65080 of the Government Code.

(4) Any plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization under Section 65080 of the Government Code has determined is consistent with either a sustainable communities strategy or an alternative planning strategy that the State Air Resources Board has determined would, if implemented, achieve the greenhouse gas emission reduction targets established by that board pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code. For purposes of this paragraph, "consistent with" means consistent with the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, as applicable, and any infrastructure necessary to support the plan, program, project, or activity.

(5) Routine maintenance and operation of any facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency.

(6) Any plan, program, project, or activity that occurs, in whole or in part, in the Delta, if both of the following conditions are met:

(A) The plan, program, project, or activity is undertaken by a local public agency that is located, in whole or in part, in the Delta.

(B) Either a notice of determination is filed, pursuant to Section 21152 of the Public Resources Code, for the plan, program, project, or activity by, or the plan, program, project, or activity is fully permitted by, September 30, 2009.

(7) (A) Any project within the secondary zone, as defined pursuant to Section 29731 of Public Resources Code as of January 1, 2009, for which a notice of approval or determination pursuant to Section 21152 of the Public Resources Code has been filed before the date on which the Delta Plan becomes effective.

(B) Any project for which a notice of approval or determination is filed on or after the date on which the final Bay Delta Conservation Plan becomes effective, and before the date on which the Delta Plan becomes effective, is not a covered action but shall be consistent with the Bay Delta Conservation Plan.

(C) Subparagraphs (A) and (B) do not apply to either of the following:

(i) Any project that is within a Restoration Opportunity Area as shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy of the Bay Delta Conservation Plan, August 3, 2009, or as shown in a final Bay Delta Conservation Plan.

(ii) Any project that is within the alignment of a conveyance facility as shown in Figures 1 to 5, inclusive, of the Final Draft Initial Assessment of Dual Delta Water Conveyance Report, April 23, 2008, and in future revisions of this document by the department.

(c) Nothing in the application of this section shall be interpreted to authorize the abrogation of any vested right whether created by statute or by common law.

85058. "Delta" means the Sacramento-San Joaquin Delta as defined

in Section 12220 and the Suisun Marsh, as defined in Section 29101 of the Public Resources Code.

85059. "Delta Plan" means the comprehensive, long-term management plan for the Delta 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.

85064. "Public water agency" means a public entity, as defined in Section 514, that provides water service, as defined in Section 515.

85066. "Restoration" means the application of ecological principles to restore a degraded or fragmented ecosystem and return it to a condition in which its biological and structural components achieve a close approximation of its natural potential, taking into consideration the physical changes that have occurred in the past and the future impact of climate change and sea level rise.

85067. "Strategic Plan" means both the "Delta Vision Strategic Plan" issued by the Delta Vision Blue Ribbon Task Force on October 17, 2008, and the "Delta Vision Implementation Report" adopted by the Delta Vision Committee and dated December 31, 2008.

PART 2. Early Actions

85080. The council shall appoint a Delta Independent Science Board in accordance with Section 85280.

85082. The council shall develop and implement a strategy to appropriately engage participation of the federal agencies with responsibilities in the Delta. This strategy shall include engaging these federal agencies to develop the Delta Plan consistent with the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and Section 8 of the federal Reclamation Act of 1902.

85084. The council shall develop an interim plan that includes recommendations for early actions, projects, and programs.

85084.5. The Department of Fish and Game, in consultation with the United States Fish and Wildlife Service and the National Marine Fisheries Service and based on the best available science, shall develop and recommend to the board Delta flow criteria and quantifiable biological objectives for aquatic and terrestrial species of concern dependent on the Delta. The recommendations shall be developed no later than 12 months after the date of enactment of this division.

85085. The department shall do all of the following:

(a) Coordinate with the Department of Fish and Game, the board, the California regional water quality control boards, and the State Lands Commission efforts to cooperate with the United States Bureau of Reclamation to construct and implement the Two-Gates Fish Protection Demonstration Project by December 1, 2010.

(b) Evaluate the effectiveness of the Three Mile Slough Barrier project.

(c) Expeditiously move ahead with other near term actions as identified in the Strategic Plan.

(d) Assist in implementing early action ecosystem restoration projects, including, but not limited to, Dutch Slough tidal marsh restoration and Meins Island tidal marsh restoration.

85086. (a) The board shall establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010.

(b) It is the intent of the Legislature to establish an accelerated process to determine instream flow needs of the Delta for the purposes of facilitating the planning decisions that are required to achieve the objectives of the Delta Plan.

(c) (1) For the purpose of informing planning decisions for the Delta Plan and the Bay Delta Conservation Plan, the board shall, pursuant to its public trust obligations, develop new flow criteria for the Delta ecosystem necessary to protect public trust resources. In carrying out this section, the board shall review existing water quality objectives and use the best available scientific information. The flow criteria for the Delta ecosystem shall include the volume, quality, and timing of water necessary for the Delta ecosystem under different conditions. The flow criteria shall be developed in a public process by the board within nine months of the enactment of this division. The public process shall be in the form of an informational proceeding conducted pursuant to Article 3 (commencing with Section 649) of Chapter 1.5 of Division 3 of Title 23 of the California Code of Regulations, and shall provide an opportunity for all interested persons to participate. The flow criteria shall not be considered predecisional with regard to any subsequent board consideration of a permit, including any permit in connection with a final BDCP.

(2) Any order approving a change in the point of diversion of the State Water Project or the federal Central Valley Project from the southern Delta to a point on the Sacramento River shall include appropriate Delta flow criteria and shall be informed by the analysis conducted pursuant to this section. The flow criteria shall be subject to modification over time based on a science-based adaptive management program that integrates scientific and monitoring results, including the contribution of habitat and other conservation measures, into ongoing Delta water management.

(3) Nothing in this section amends or otherwise affects the application of the board's authority under Part 2 (commencing with Section 1200) of Division 2 to include terms and conditions in permits that in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated.

(d) The board shall enter into an agreement with the State Water Project contractors and the federal Central Valley Project contractors, who rely on water exported from the Sacramento River watershed, or a joint powers authority comprised of those contractors, for reimbursement of the costs of the analysis conducted pursuant to this section.

(e) The board shall submit its flow criteria determinations pursuant to this section to the council for its information within 30 days of completing the determinations.

85087. The board, by December 31, 2010, shall submit to the Legislature a prioritized schedule and estimate of costs to complete instream flow studies for the Delta and for high priority rivers and streams in the Delta watershed, not otherwise covered by Section 85086, by 2012, and for all major rivers and streams outside the Sacramento River watershed by 2018. In developing this schedule, the board shall consult with the Department of Fish and Game as to the timing of its submission of recommendations for instream flow needs.

85088. Until the board issues an order approving a change in the point of diversion of the State Water Project and the federal Central Valley Project from the southern Delta to a point on the Sacramento River as specified in subdivision (c) of Section 85086, the department shall not commence construction of any diversion, conveyance, or other facility necessary to divert and convey water pursuant to the change in point of diversion.

85089. Construction of a new Delta conveyance facility shall not be initiated until the persons or entities that contract to receive water from the State Water Project and the federal Central Valley Project or a joint powers authority representing those entities have made arrangements or entered into contracts to pay for both of the following:

(a) The costs of the environmental review, planning, design, construction, and mitigation, including mitigation required pursuant to Division 13 (commencing with Section 21000 of the Public Resources Code), required for the construction, operation, and maintenance of any new Delta water conveyance facility.

(b) Full mitigation of property tax or assessments levied by local governments or special districts for land used in the construction, location, mitigation, or operation of new Delta conveyance facilities.

PART 3. DELTA GOVERNANCE

CHAPTER 1. DELTA STEWARDSHIP COUNCIL

85200. (a) The Delta Stewardship Council is hereby established as an independent agency of the state.

(b) (1) The council shall consist of seven voting members, of which four members shall be appointed by the Governor and confirmed by the Senate, one member shall be appointed by the Senate Committee on Rules, one member shall be appointed by the Speaker of the Assembly, and one member shall be the Chairperson of the Delta Protection Commission. Initial appointments to the council shall be made by July 1, 2010.

(2) No member of the council shall serve two consecutive terms, but a member may be reappointed after a period of two years following the end of his or her term.

(c) (1) (A) The initial terms of two of the four members appointed by the Governor shall be four years.

(B) The initial terms of two of the four members appointed by the Governor shall be six years.

(C) The initial terms of the members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall be four years.

(D) Upon the expiration of each term described in subparagraphs (A), (B), or (C), the term of each succeeding member shall be four years.

(2) The Chairperson of the Delta Protection Commission shall serve as a member of the council for the period during which he or she holds the position as commission chairperson.

(d) Any vacancy shall be filled by the appointing authority within 60 days. If the term of a council member expires, and no successor is appointed within the allotted timeframe, the existing member may serve up to 180 days beyond the expiration of his or her term.

(e) The council members shall select a chairperson from among their members, who shall serve for not more than four years in that capacity.

(f) The council shall meet once a month in a public forum. At least two meetings each year shall take place at a location within the Delta.

85201. (a) The chairperson shall serve full time. Other members shall serve one-third time. The council may select a vice chairperson and other officers determined to be necessary.

(b) Each member of the council shall receive the salary provided for in Section 11564 of the Government Code.

(c) The members of the council shall be reimbursed for expenses necessarily incurred in the performance of official duties.

(d) The council shall appoint an executive officer who shall serve full time at the pleasure of the council.

(e) The executive officer shall hire employees necessary to carry out council functions.

(f) The number of employees and qualifications of those employees shall be determined by the council, subject to the availability of funds.

(g) The salary of each employee of the council shall be determined by the State Personnel Board, and shall reflect the duties and responsibilities of the position.

(h) All persons employed by the council are state employees, subject to the duties, responsibilities, limitations, and benefits of the state.

85202. Council members shall possess diverse expertise and reflect a statewide perspective.

85203. The headquarters of the council shall be located in Sacramento.

85204. The council shall establish and oversee a committee of agencies responsible for implementing the Delta Plan. Each agency shall coordinate its actions pursuant to the Delta Plan with the council and the other relevant agencies.

CHAPTER 2. MISSION, DUTIES, AND RESPONSIBILITIES OF THE COUNCIL

85210. The council has all of the following powers:

(a) To sue or be sued.

(b) To enter into contracts.

(c) To employ the services of public, nonprofit, and private entities.

(d) To delegate administrative functions to council staff.

(e) To employ its own legal staff or contract with other state or federal agencies for legal services, or both. The council may employ special legal counsel with the approval of the Attorney General.

(f) To receive funds, including funds from private and local governmental sources, contributions from public and private sources, as well as state and federal appropriations.

(g) To disburse funds through grants, public assistance, loans, and contracts.

(h) To request reports from state, federal, and local governmental agencies on issues related to the implementation of the Delta Plan.

(i) To adopt regulations or guidelines as needed to carry out the powers and duties identified in this division.

(j) To comment on state agency environmental impact reports for projects outside the Delta that the council determines will have a significant impact on the Delta.

(k) To hold hearings in all parts of the state necessary to carry out the powers vested in it, and for those purposes has the powers conferred upon the heads of state departments pursuant to Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code. Any hearing by the council may be conducted by any member of the council, or other designee, upon authorization of the council, and he or she shall have the powers granted to the council by this section, provided that any final action of the council shall be taken by a majority of the membership of the council at a meeting duly called and held.

85210.5. A majority of the voting members of the council shall constitute a quorum for the transaction of the business of the council. A majority vote of the voting membership shall be required to take action with respect to any matter unless otherwise specified in this division. The vote of each member shall be individually recorded.

85211. The Delta Plan shall include performance measurements that will enable the council to track progress in meeting the objectives of the Delta Plan. The performance measurements shall include, but need not be limited to, quantitative or otherwise measurable assessments of the status and trends in all of the following:

(a) The health of the Delta's estuary and wetland ecosystem for supporting viable populations of aquatic and terrestrial species, habitats, and processes, including viable populations of Delta fisheries and other aquatic organisms.

(b) The reliability of California water supply imported from the Sacramento River or the San Joaquin River watershed.

85212. The council shall review and provide timely advice to local and regional planning agencies regarding the consistency of local and regional planning documents, including sustainable communities strategies and alternative planning strategies prepared pursuant to Section 65080 of the Government Code, with the Delta Plan. The council's input shall include, but not be limited to, reviewing the consistency of local and regional planning documents with the ecosystem restoration needs of the Delta and reviewing whether the lands set aside for natural resource protection are sufficient to meet the Delta's ecosystem needs. A metropolitan planning organization preparing a regional transportation plan under Section 65080 of the Government Code that includes land within the primary or secondary zones of the Delta shall consult with the council early in the planning process regarding the issues and policy choices relating to the council's advice. No later than 60 days prior to the adoption of a final regional transportation plan, the metropolitan planning organization shall provide the council with a draft sustainable communities strategy and an alternative planning strategy, if any. Concurrently, the metropolitan planning organization shall provide notice of its submission to the council in the same manner in which agencies file a certificate of consistency pursuant to Section 85225. If the council concludes that the draft sustainable communities strategy or alternative planning strategy is inconsistent with the Delta Plan, the council shall provide written notice of the claimed inconsistency to the metropolitan planning organization no later than 30 days prior to the adoption of the final regional transportation plan. If the council provides timely notice of a claimed inconsistency, the metropolitan planning organization's adoption of the final regional transportation plan shall include a detailed response to the council's notice.

CHAPTER 3. CONSISTENCY OF STATE AND LOCAL PUBLIC AGENCY ACTIONS

85225. A state or local public agency that proposes to undertake a covered action, prior to initiating the implementation of that covered action, shall prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and shall submit that certification to the council.

85225.5. To assist state and local public agencies in preparing the required certification, the council shall develop procedures for early consultation with the council on the proposed covered action.

85225.10. (a) Any person who claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal with regard to a certification of consistency submitted to the council.

(b) The appeal shall clearly and specifically set forth the basis for the claim, including specific factual allegations, that the covered action is inconsistent with the Delta Plan. The council may request from the appellant additional information necessary to clarify, amplify, correct, or otherwise supplement the information submitted with the appeal, within a reasonable period.

(c) The council, or by delegation the executive officer, may dismiss the appeal for failure of the appellant to provide information requested by the council within the period provided, if the information requested is in the possession or under the control of the appellant.

85225.15. The appeal shall be filed no later than 30 days after the submission of the certification of consistency. If no person appeals the certification of consistency, the state or local public agency may proceed to implement the covered action.

85225.20. The appeal shall be heard by the council within 60 days of the date of the filing of the appeal, unless the council, or by delegation the executive officer, determines that the issue raised on appeal is not within the council's jurisdiction or does not raise an appealable issue. The council shall make its decision on the appeal within 60 days of hearing the appeal.

85225.25. After a hearing on an appealed action, the council shall make specific written findings either denying the appeal or remanding the matter to the state or local public agency for reconsideration of the covered action based on the finding that the certification of consistency is not supported by substantial evidence in the record before the state or local public agency that filed the certification. Upon remand, the state or local agency may determine whether to proceed with the covered action. If the agency decides to proceed with the action or with the action as modified to respond to the findings of the council, the agency shall, prior to proceeding with the action, file a revised certification of consistency that addresses each of the findings made by the council and file that revised certification with the council.

85225.30. The council shall adopt administrative procedures governing appeals, which shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

CHAPTER 4. DELTA WATERMASTER

85230. (a) The board, in consultation with the council, shall appoint, for a term of four years, a special master for the Delta, whose title shall be "the Delta Watermaster."

(b) The board shall adopt internal procedures delegating authority to the Delta Watermaster. The Delta Watermaster shall exercise the board's authority to provide timely monitoring and enforcement of board orders and license and permit terms and conditions. The Delta Watermaster's delegated authority shall include authority to require monitoring and reporting, authority for approvals delegated to an officer or employee of the board by the terms of a water right permit or license, authority to approve temporary urgency changes pursuant to Chapter 6.6 (commencing with Section 1435) of Part 2 of Division

2, and authority to issue a notice of proposed cease and desist order or administrative civil liability
complaint. The Delta Watermaster's authority shall be limited to diversions in the Delta, and for the monitoring and enforcement of the board's orders and license and permit terms and conditions that apply to conditions in the Delta.

(c) The internal procedures adopted by the board shall provide for due process in adjudicative proceedings, and may establish procedures for the issuance of a stay of any order or decision of the Delta Watermaster for which a petition for reconsideration is filed or reconsideration is ordered under Section 1122. The board may provide any additional duties or needs of the Delta Watermaster that the board deems necessary for effective day-to-day enforcement of its decisions.

(d) The Delta Watermaster shall submit regular reports to the board and the council including, but not limited to, reports on water rights administration, water quality issues, and conveyance operations.

CHAPTER 5. DELTA INDEPENDENT SCIENCE BOARD AND DELTA SCIENCE PROGRAM

85280. (a) The Delta Independent Science Board is hereby established in state government.

(1) The Delta Independent Science Board shall consist of no more than 10 members appointed by the council. The term of office for members of the Delta Independent Science Board shall be five years. A member may serve no more than two terms.

(2) Members of the Delta Independent Science Board shall be nationally or internationally prominent scientists with appropriate expertise to evaluate the broad range of scientific programs that support adaptive management of the Delta. The members shall not be directly affiliated with a program or agency subject to the review activities of the Delta Independent Science Board.

(3) The Delta Independent Science Board shall provide oversight of the scientific research, monitoring, and assessment programs that support adaptive management of the Delta through periodic reviews of each of those programs that shall be scheduled to ensure that all Delta scientific research, monitoring, and assessment programs are reviewed at least once every four years.

(4) The Delta Independent Science Board shall submit to the council a report on the results of each review, including recommendations for any changes in the programs reviewed by the board.

(b) After consultation with the Delta Independent Science Board, the council shall appoint a lead scientist for the Delta Science Program.

(1) The lead scientist shall meet all of the following qualifications:

(A) Hold an advanced degree in a field related to water or ecosystem management.

(B) Have a strong record of scientific research and publication in peer-reviewed scientific journals in a field related to water or ecosystem management.

(C) Have experience advising high-level managers in science-based decisionmaking in the areas of water management and ecosystem restoration.

(D) Have the capability to guide the application of an adaptive management process to resource management policy decisions in the Delta.

(2) The term of office for the lead scientist shall be no more than three years. The lead scientist may serve no more than two terms.

(3) The lead scientist shall oversee the implementation of the Delta Science Program. In carrying out that responsibility, the lead scientist shall regularly consult with the agencies participating in the program.

(4) The mission of the Delta Science Program shall be to provide the best possible unbiased scientific information to inform water and environmental decisionmaking in the Delta. That mission shall be carried out through funding research, synthesizing and communicating scientific information to policymakers and decisionmakers, promoting independent scientific peer review, and coordinating with Delta agencies to promote science-based adaptive management. The Delta Science Program shall assist with development and periodic updates of the Delta Plan's adaptive management program.

(c) The Delta Science Program shall function as a replacement for, and successor to, the CALFED Science Program and the Delta Independent Science Board shall replace the CALFED Independent Science Board.

PART 4. COMPREHENSIVE DELTA PLANNING

CHAPTER 1. THE DELTA PLAN

85300. (a) On or before January 1, 2012, the council shall develop, adopt, and commence implementation of the Delta Plan pursuant to this part that furthers the coequal goals. The Delta Plan shall include subgoals and strategies to assist in guiding state and local agency actions related to the Delta. In developing the Delta Plan, the council shall consider each of the strategies and actions set forth in the Strategic Plan and may include any of those strategies or actions in the Delta Plan. The Delta Plan may also identify specific actions that state or local agencies may take to implement the subgoals and strategies.

(b) In developing the Delta Plan, the council shall consult with federal, state, and local agencies with responsibilities in the Delta. All state agencies with responsibilities in the Delta shall cooperate with the council in developing the Delta Plan, upon request of the council.

(c) The council shall review the Delta Plan at least once every five years and may revise it as the council deems appropriate. The council may request any state agency with responsibilities in the Delta to make recommendations with respect to revision of the Delta Plan.

(d) (1) The council shall develop the Delta Plan consistent with all of the following:

(A) The federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), or an equivalent compliance mechanism.

(B) Section 8 of the federal Reclamation Act of 1902.

(C) The federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.).

(2) If the council adopts a Delta Plan pursuant to the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the council shall submit the Delta Plan for approval to the United States Secretary of Commerce pursuant to that act, or to any other federal official assigned responsibility for the Delta pursuant to a federal statute enacted after January 1, 2010.

(e) The council shall report to the Legislature no later than

March 31, 2012, as to its adoption of the Delta Plan.

85301. (a) The commission shall develop, for consideration and incorporation into the Delta Plan by the council, a proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place, in a manner consistent with the coequal goals. For the purpose of carrying out this subdivision, the commission may include in the proposal the relevant strategies described in the Strategic Plan.

(b) (1) The commission shall include in the proposal a plan to establish state and federal designation of the Delta as a place of special significance, which may include application for a federal designation of the Delta as a National Heritage Area.

(2) The commission shall include in the proposal a regional economic plan to support increased investment in agriculture, recreation, tourism, and other resilient land uses in the Delta. The regional economic plan shall include detailed recommendations for the administration of the Delta Investment Fund created by Section 29778.5 of the Public Resources Code.

(c) For the purposes of assisting the commission in its preparation of the proposal, both of the following actions shall be undertaken:

(1) The Department of Parks and Recreation shall prepare a proposal, for submission to the commission, to expand within the Delta the network of state recreation areas, combining existing and newly designated areas. The proposal may incorporate appropriate aspects of any existing plans, including the Central Valley Vision Implementation Plan adopted by the Department of Parks and Recreation.

(2) The Department of Food and Agriculture shall prepare a proposal, for submission to the commission, to establish market incentives and infrastructure to protect and enhance the economic and public values of Delta agriculture.

(d) The commission shall submit the proposal developed pursuant to subdivision (a) to the council. The council shall consider the proposal and may include any portion of the proposal in the Delta Plan if the council, in its discretion, determines that the portion of the proposal is feasible and consistent with the objectives of the Delta Plan and the purposes of this division.

85302. (a) The implementation of the Delta Plan shall further the restoration of the Delta ecosystem and a reliable water supply.

(b) The geographic scope of the ecosystem restoration projects and programs identified in the Delta Plan shall be the Delta, except that the Delta Plan may include recommended ecosystem projects outside the Delta that will contribute to achievement of the coequal goals.

(c) The Delta Plan shall include measures that promote all of the following characteristics of a healthy Delta ecosystem:

(1) Viable populations of native resident and migratory species.

(2) Functional corridors for migratory species.

(3) Diverse and biologically appropriate habitats and ecosystem processes.

(4) Reduced threats and stresses on the Delta ecosystem.

(5) Conditions conducive to meeting or exceeding the goals in existing species recovery plans and state and federal goals with respect to doubling salmon populations.

(d) The Delta Plan shall include measures to promote a more reliable water supply that address all of the following:

(1) Meeting the needs for reasonable and beneficial uses of water.

(2) Sustaining the economic vitality of the state.
(3) Improving water quality to protect human health and the environment.
(e) The following subgoals and strategies for restoring a healthy ecosystem shall be included in the Delta Plan:
(1) Restore large areas of interconnected habitats within the Delta and its watershed by 2100.
(2) Establish migratory corridors for fish, birds, and other animals along selected Delta river channels.
(3) Promote self-sustaining, diverse populations of native and valued species by reducing the risk of take and harm from invasive species.
(4) Restore Delta flows and channels to support a healthy estuary and other ecosystems.
(5) Improve water quality to meet drinking water, agriculture, and ecosystem long-term goals.
(6) Restore habitat necessary to avoid a net loss of migratory bird habitat and, where feasible, increase migratory bird habitat to promote viable populations of migratory birds.
(f) The council shall consider, for incorporation into the Delta Plan, actions designed to implement the subgoals and strategies described in subdivision (e).
(g) In carrying out this section, the council shall make use of the best available science.
(h) The Delta Plan shall include recommendations regarding state agency management of lands in the Delta.
85303. The Delta Plan shall promote statewide water conservation, water use efficiency, and sustainable use of water.
85304. The Delta Plan shall promote options for new and improved infrastructure relating to the water conveyance in the Delta, storage systems, and for the operation of both to achieve the coequal goals.

85305. (a) The Delta Plan shall attempt to reduce risks to people, property, and state interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and strategic levee investments.
(b) The council may incorporate into the Delta Plan the emergency preparedness and response strategies for the Delta developed by the California Emergency Management Agency pursuant to Section 12994.5.
85306. The council, in consultation with the Central Valley Flood Protection Board, shall recommend in the Delta Plan priorities for state investments in levee operation, maintenance, and improvements in the Delta, including both levees that are a part of the State Plan of Flood Control and nonproject levees.
85307. (a) The Delta Plan may identify actions to be taken outside of the Delta, if those actions are determined to significantly reduce flood risks in the Delta.
(b) The Delta Plan may include local plans of flood protection.
(c) The council, in consultation with the Department of Transportation, may address in the Delta Plan the effects of climate change and sea level rise on the three state highways that cross the Delta.
(d) The council, in consultation with the State Energy Resources Conservation and Development Commission and the Public Utilities Commission, may incorporate into the Delta Plan additional actions to address the needs of Delta energy development, energy storage, and energy distribution.
85308. The Delta Plan shall meet all of the following requirements:
(a) Be based on the best available scientific information and the

independent science advice provided by the Delta Independent Science Board.

(b) Include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan.

(c) Where appropriate, utilize monitoring, data collection, and analysis of actions sufficient to determine progress toward meeting the quantified targets.

(d) Describe the methods by which the council shall measure progress toward achieving the coequal goals.

(e) Where appropriate, recommend integration of scientific and monitoring results into ongoing Delta water management.

(f) Include a science-based, transparent, and formal adaptive management strategy for ongoing ecosystem restoration and water management decisions.

85309. The department, in consultation with the United States Army Corps of Engineers and the Central Valley Flood Protection Board, shall prepare a proposal to coordinate flood and water supply operations of the State Water Project and the federal Central Valley Project, and submit the proposal to the council for consideration for incorporation into the Delta Plan. In drafting the proposal, the department shall consider all related actions set forth in the Strategic Plan.

CHAPTER 2. BAY DELTA CONSERVATION PLAN

85320. (a) The Bay Delta Conservation Plan (BDCP) shall be considered for inclusion in the Delta Plan in accordance with this chapter.

(b) The BDCP shall not be incorporated into the Delta Plan and the public benefits associated with the BDCP shall not be eligible for state funding, unless the BDCP does all of the following:

(1) Complies with Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code.

(2) Complies with Division 13 (commencing with Section 21000) of the Public Resources Code, including a comprehensive review and analysis of all of the following:

(A) A reasonable range of flow criteria, rates of diversion, and other operational criteria required to satisfy the criteria for approval of a natural community conservation plan as provided in subdivision (a) of Section 2820 of the Fish and Game Code, and other operational requirements and flows necessary for recovering the Delta ecosystem and restoring fisheries under a reasonable range of hydrologic conditions, which will identify the remaining water available for export and other beneficial uses.

(B) A reasonable range of Delta conveyance alternatives, including through-Delta, dual conveyance, and isolated conveyance alternatives and including further capacity and design options of a lined canal, an unlined canal, and pipelines.

(C) The potential effects of climate change, possible sea level rise up to 55 inches, and possible changes in total precipitation and runoff patterns on the conveyance alternatives and habitat restoration activities considered in the environmental impact report.

(D) The potential effects on migratory fish and aquatic resources.

(E) The potential effects on Sacramento River and San Joaquin River flood management.

(F) The resilience and recovery of Delta conveyance alternatives in the event of catastrophic loss caused by earthquake or flood or other natural disaster.

(G) The potential effects of each Delta conveyance alternative on Delta water quality.

(c) The department shall consult with the council and the Delta Independent Science Board during the development of the BDCP. The council shall be a responsible agency in the development of the environmental impact report. The Delta Independent Science Board shall review the draft environmental impact report and submit its comments to the council and the Department of Fish and Game.

(d) If the Department of Fish and Game approves the BDCP as a natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code, the council shall have at least one public hearing concerning the incorporation of the BDCP into the Delta Plan.

(e) If the Department of Fish and Game approves the BDCP as a natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code and determines that the BDCP meets the requirements of this section, and the BDCP has been approved as a habitat conservation plan pursuant to the federal Endangered Species Act (16 U.S.C. Section 1531 et seq.), the council shall incorporate the BDCP into the Delta Plan. The Department of Fish and Game's determination that the BDCP has met the requirements of this section may be appealed to the council.

(f) The department, in coordination with the Department of Fish and Game, or any successor agencies charged with BDCP implementation, shall report to the council on the implementation of the BDCP at least once a year, including the status of monitoring programs and adaptive management.

(g) The council may make recommendations to BDCP implementing agencies regarding the implementation of the BDCP. BDCP implementing agencies shall consult with the council on these recommendations. These recommendations shall not change the terms and conditions of the permits issued by state and federal regulatory agencies.

85321. The BDCP shall include a transparent, real-time operational decisionmaking process in which fishery agencies ensure that applicable biological performance measures are achieved in a timely manner with respect to water system operations.

85322. This chapter does not amend, or create any additional legal obligation or cause of action under, Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code or Division 13 (commencing with Section 21000) of the Public Resources Code.

CHAPTER 3. OTHER PLANS FOR THE DELTA

85350. The council may incorporate other completed plans related to the Delta into the Delta Plan to the extent that the other plans promote the coequal goals.

SEC. 40. (a) Pursuant to Section 75026 of the Public Resources Code, the sum of twenty-eight million dollars ($28,000,000) is hereby appropriated to the Department of Water Resources for expenditure by that department pursuant to paragraph (12) of subdivision (a) of Section 75027 of the Public Resources Code for the Two-Gates Fish Protection Demonstration Program managed by the United States Bureau of Reclamation. The Department of Water Resources shall expend such funds only consistent with the requirements of Sections 75026 and 75027 of the Public Resources Code.

(b) It is the intent of the Legislature to finance the activities of the Delta Stewardship Council and the Sacramento-San Joaquin Delta Conservancy from funds made available pursuant to the Disaster

Preparedness and Flood Prevention Bond Act of 2006 (Chapter 1.699 (commencing with Section 5096.800) of Division 5 of the Public Resources Code) and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Division 43 (commencing with Section 75001) of the Public Resources Code).

SEC. 41. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 42. This act shall take effect only if Senate Bill 6 and Senate Bill 7 of the 2009-10 Seventh Extraordinary Session of the Legislature are enacted and become effective.

EXHIBIT 6

Legistative
Conference Committee
ON
SB 12, SB 229, SB 458, AB 39 and AB 49

September 3, 2009