

Assessment of preprint Delta and water bills

Five pieces of Delta/Water legislation were released in preprint form August 4, 2009. These bills are based on legislation by the same authors heard in committee earlier in 2009. The main topic of the bill and the initial bill are also identified below:

- *Preprint Assembly No. 1 (AB 1p)* – The Delta Plan – formerly AB 39 (Huffman)
- *Preprint Assembly No. 2 (AB 2p)* – Water Conservation and Sustainable Management – formerly AB 49 (Feuer; Assemblyman Huffman joins as co-author in preprint bill)
- *Preprint Senate No. 1 (SB 1p)* – Delta Governance – formerly SB 12 (Simitian)
- *Preprint Senate No. 2 (SB 2p)* – Water Use Reporting – formerly SB 229 (Pavley)
- *Preprint Senate No. 4 (SB 4p)* (amended August 14)– Delta Conservancy and Delta Protection Commission – formerly SB 3p and SB 458 (Wolk)

As a set, these are strong bills, building on the *Delta Vision Strategic Plan* (adopted October 2008) and they can be improved with limited, but important, changes. All seven goals of the *Delta Vision Strategic Plan* are now addressed. Most of the *Delta Vision Strategic Plan* strategies and many action recommendations are incorporated in the proposed legislation.

It is presumed that a related state water/Delta bond bill will also be adopted. That bond should incorporate the provisions of these bills and include meaningful actions to require the achievement of particular goals as a condition of receiving bond funds.

In several areas further discussed below– including the coequal goals serving as the foundation for policy making, appointments to the Delta Stewardship Council, the Delta Conservancy, and specific targets for habitats critical to ecosystem function – these bills would be strengthened by adopting the recommendations in the *Delta Vision Strategic Plan*.

Some useful additional proposals – such as a Delta Water Master as agent of the State Water Resources Control Board or identifying “Early Actions” – are included in the preprint draft bills and they also are discussed below.

The three preprint bills dealing with governance, finance and policy making (AB 1p, SB 1p and SB 4p) are structured to work together. Except for reference to the title of their respective acts, AB 1p and SB 1p have identical language for Part 1 “General Provisions.” This is important as common findings, policy statements, miscellaneous provisions and definitions greatly reduce uncertainty regarding the meaning of language in the bills, providing a common foundation upon which to elaborate the specific action provisions of the bills. However, SB 4p proposes a conservancy with insufficient capacity to achieve needed ecosystem restoration.

AB 2p is a reasonable approach to urban water conservation and sustainable management of water resources and initiates water planning for agriculture, Goal 4 of the *Delta Vision Strategic Plan*. This state wide issue is appropriately addressed in a separate bill. Similarly, SB 2p provides an effective statewide approach to providing improved information about use of water resources, also related to Goal 4 of the *Delta Vision Strategic Plan*.

Summary assessment of the preprint bills against the seven goals of the *Delta Vision Strategic Plan*:

Strategic Plan Goal: ¹	Grade	Preprint bill sections	Selected Comments
1. Make the co-equal goals of water supply reliability and ecosystem restoration the legal foundation of Delta and water policy making.	B+	AB 1p and SB 1p: Section 85020(a), (b)(1) and (b)(6); Section 85203; Section 85054 SB 1p: Section 85211 (Council establishes performance measures related to ecosystem and reliability of water supply) SB 4p: Section 29702 (coequal goals); Section 29773.	Overall, substantial provisions to satisfy Goal 1. <ul style="list-style-type: none"> • However, AB 1p and SB 1p, Section 85054, and SB 4p, section 29702, adds the Delta as evolving place to the two goals of ecosystem function and reliable water supply, weakening the state wide foundation for policy making. • SB 4 p muddies the relationship between Council and Commission by giving Commission authority to review "any significant project or proposed project within the scope of the Delta Plan," requiring the Council to hold public meetings and reach specific findings in response to Commission recommendations (Section 29773).
2. Recognize and enhance the unique cultural, recreational and agricultural values of the California Delta as an evolving place, an action critical to achieving the co-equal goals.	A	AB 1p and SB 1p: Section 85020(b)(2); Section 80522; Section 85054 SB 4p: Section 29702 (goals of the State in the Delta); Section 32301 (findings and goals for the Delta Conservancy); Section 32322 (goals for the Delta Conservancy)	Overall, effective provisions to satisfy Goal 2.
3. Restore the Delta ecosystem as the heart of a healthy estuary.	B+	AB 1p and SB 1p: Section 85020(b)(3) and (b)(5); Section 85065; Section 85086 AB 1p: Section 85302 (ecosystem function in Delta Plan) SB 4p: Sections 32300-32376.	Overall, substantial provisions to satisfy Goal 3. <ul style="list-style-type: none"> • Effective provisions on in-stream flows. • Useful definition of the scope of ecosystem restoration to the first dam on Delta tributaries. • Lacks specified targets for habitat restoration, which is essential. • Conservancy proposed in SB 4p significantly weaker than that proposed in <i>Delta Vision Strategic Plan</i> and lacks capacity to effectively manage property for ecosystem restoration.

¹ The Governor's Cabinet Committee approved all seven goals recommended by the Delta Vision Blue Ribbon Task Force. See: *Delta Vision Implementation Report*, December 2008.

Strategic Plan Goal:	Grade	Preprint bill sections	Selected Comments
4. Promote statewide water conservation, efficiency and sustainable use.	A-	AB 1p and SB 1p: Section 85020(b)(4) and Section 85021; AB 1p: Section 85303 (statewide water policy) AB 2p: entire proposed bill SB 2p: entire proposed bill	Overall, effective provisions to satisfy Goal 4. <ul style="list-style-type: none"> AB 2p builds on existing programs for urban water efficiency, new provisions for agriculture water management plans. Lacks statewide goals recommended under Strategy 4.2 of the <i>Delta Vision Strategic Plan</i>. SB 2p provides the required policy tools for developing information and managing water use in the state.
5. Build facilities to improve the existing water conveyance system and expand statewide storage; operate both to achieve the co-equal goals.	B+	AB 1p and SB 1p: Section 85020(b)(7) AB 1p: Section 85304 (water conveyance and storage)	Overall, substantial provisions to satisfy Goal 5. <ul style="list-style-type: none"> Giving the new governance Council authority to act consistent with the co-equal goals is an important step to achieve a more reliable water supply and improving the Delta ecosystem. AB 1p adds responsibilities to BDCP to meet the salmon doubling goal, a challenging obligation (Section 85320(j)(2)(A)).
6. Reduce risks to people, property and state interests in the Delta by effective emergency preparedness, appropriate land uses and strategic levee investments.	B	AB 1p and SB 1p: Section 85020(b)(8) AB 1p: Section 85305 (risk reduction, including levees and flood protection) SB 4p: Sections 29702 through 29780.	Overall, provisions to partially satisfy Goal 6. <ul style="list-style-type: none"> SB 4 p focuses the Delta Protection Commission land use activities on the primary Delta (Section 29763 and Section 29764), a substantial reduction from Strategy 6.2 in the <i>Delta Vision Strategic Plan</i>. Additionally, SB 4p establishes a right for development in the primary zone, subject to specific findings, until the Commission approves local government general plan amendments (Section 29765).

Strategic Plan Goal:	Grade	Preprint bill sections	Selected Comments
<p>7. Establish a new governance structure with the authority, responsibility, accountability, science support and secure funding to achieve these goals.</p>	<p>B+</p>	<p>AB 1p and SB 1p: Section 85020(b)(9); Section 85066.</p> <p>SB 1p: Sections 85200 through 85407 (establishes Council, Delta Watermaster, Independent Science Board and a financing system).</p> <p>AB 1p: Sections 85300 through 85350 (elements of the Delta Plan, relationship to the Bay Delta Conservation Plan and provisions for consistency of state and local agency actions); Section 85306 (requirements of the Plan)</p> <p>SB 4p: Sections 29735 through 29780 modify the Delta Protection Commission, provide for developing a resources management plan, with provisions for consistency with the Delta Plan and local government plans and actions and creates a Delta Investment Fund. It is unclear if these provisions grant state interests sufficient representation.</p> <p>SB 4P: Sections 32300 through 32381 creates a Delta Conservancy with responsibilities for advancing both the environmental protection and the economic well-being of the Delta residents.</p>	<p>Overall, substantial provisions to satisfy Goal 7.</p> <ul style="list-style-type: none"> The powers of the proposed Council in SB 1p and the provisions for a Delta Plan in AB 1p are largely consistent with Goal 7. The bills depart from the Strategic Plan recommendation that Council members be appointed by the Governor, and represent the interests of all Californians, not interest groups or regions. The <i>Delta Vision Strategic Plan</i> enumerates needed authority and responsibilities of a Delta Council, the Delta Protection Commission and a Delta Conservancy, recommendations which are altered in the preprint bills. In particular, the Delta Protection Commission governing board and powers are significantly different and the Delta Conservancy lacks important capacity to ensure effective ecosystem restoration. The authority of the Council to judge and enforce consistency of actions of state and local agencies with the adopted Delta Plan is not clearly granted, but is qualified as "to the maximum extent possible" (SB 1p, Section 85212) and discussion of plans but not also projects (SB 1p, Sections 85215-85218.) Finally, the preprint bills do not provide the Council and Conservancy waivers from contracting provisions and separate CEQA processes which are required for timely action.

Areas for improvement

As noted above, this package of preprint bills makes substantial progress in implementing the *Delta Vision Strategic Plan* but would be improved in a limited number of areas by incorporating the recommendations of that plan. Those areas include:

1. Return to the definition of coequal goals as "restoring the Delta ecosystem and creating a more reliable water supply for California."

2. Return to a Governor's appointment for all members of the Delta Council, with Senate approval, as recommended in the *Delta Vision Strategic Plan*.
3. Enhance the independence of the Delta Council by explicitly stating that it is independent.
4. Return to the recommendations of the *Delta Vision Strategic Plan* regarding powers and responsibilities of both the Delta Protection Commission and the Delta Conservancy.
5. Return to the recommended targets for habitat restoration, critical for ecosystem function in the Delta estuary.
6. Return to the Council the authority to adopt a Delta Plan, the requirement that state agencies conform to that Plan, and give the Council authority to ensure consistency of state and local agency actions with the Delta Plan.
7. Return to a general insistence that there should be an effective integration of federal agencies and activities into implementation of the Delta Plan, including exploring an option of a functional equivalent alternative to the CZMA recommendation if that better suits the needs of the federal government.
8. Guarantee adequate funding of the Council and the projects included in the Delta Plan by removing the requirement for legislative appropriations of revenues generated under the authority in SB 1p.
9. Make explicit that any related bond is effectively linked to the Delta Council and Delta Plan.
10. Return to the recommended waivers to contracting procedures and an expedited CEQA process for the Council and Conservancy to speed action.

Additional proposals of merit

The preprint bills include some useful proposals that are consistent with the *Delta Vision Strategic Plan*. In some cases these are new proposals while in others, they are largely repackaging proposals in that plan.

AB 1p and SB 1p: Part 2: Early Actions (Sections 85080 through 85086). This list of early actions required while the Delta Plan is being developed includes some items recommended as "Near Term Actions" in the *Delta Vision Strategic Plan*,² others which are related to developing the Delta Plan and others which are not in the *Delta Vision Strategic Plan*. In the first category are Section 85084(c) and (d), respectively directing the Department of Water Resources and the Department of Fish and Game to implement near-term restoration projects, Near-Term Action recommendation 8, and directing the Department of Fish and Game to determine instream flow needs, Near Term Action recommendation 3. In the second category of preparation for the Delta Plan is Section 85083 directing the Council to develop a list of all applicable legal requirements and determine the relevance of all other federal, state and local plans within 120 days of appointment of a quorum of Council members. Finally, a new proposal is offered in Section 85083(b) requiring the Council to commence study of the transfer of the State Water Project to a separate public agency or utility.

SB 1p: Chapter 3. Delta Watermaster (Sections 85230 through 85232). This proposal is an innovative way to focus the capacity of the State Water Resources Control Board and to provide linkage to the Delta Council while leaving intact the underlying system of authorities and responsibilities.

². *Delta Vision Strategic Plan* (October 2008). Pages 50-52.