

Comments on final Delta/water legislative package of September 11, 2009

Released September 28, 2009

Overview:

The legislature considered and failed to approve a combined Delta/water policy bill (SB 68)¹ and a water bond bill (AB 893) on September 11. In fairness, however, the effort came closer to resolution of major policy issues than at any time in the last 28 years.

Both bills had positive elements. However, last minute amendments departed substantially from the linked recommendations of the *Delta Vision Strategic Plan*. The Delta Vision Foundation provided a preliminary review of the amended bills on September 11 and concluded that in key elements, the bills were not in substantial agreement with the major goals and recommendations of Delta Vision.²

SB 68 (water and Delta policies) present these problems:

- A weak Delta Stewardship Council would be established and directed to adopt a Delta Plan. However, late changes in SB 68 exempt important state actions from inclusion in the Delta Plan and give the Council no ability to ensure state and local agencies implement the Delta Plan,
- SB 68 provides no funding for the council's operations and implementation of the Delta Plan, nor does AB 893 provide any funding for these purposes.
- SB 68 weakened the authority of the existing Delta Protection Commission, a reversal of the Delta Vision recommendation to strengthen the institution.

AB 893 (bond expenditures and water/Delta governance and finance) presents these problems:

- AB 893 fails to link the expenditure of bond funds to any policy established by SB 68 and
- AB 893 fails to require that continued spending be linked to the Delta Plan.
- AB 893 fails to provide funding for the Delta Stewardship Council, whether by fee authority and/or direct funding and does not provide the Council with revenue bond authority.

1. The five bills included in AB 68 are: AB 39 (Huffman) defines the Delta ecosystem to be protected; AB 49 (Feuer/Huffman) implements the Governor's calls for a 20% water savings by the year 2020; SB 12 (Simitian) establishes a new Delta governance system to pursue the co-equal goals of a reliable supply of water for Californians and improvements in the Delta ecosystem; SB 229 (Pavley) gives the State Water Board authority to enforce long-standing state law requiring the reporting of water use by permit holders, and also requires expanded groundwater monitoring; SB 458 (Steinberg/Simitian) revises the role of the existing Delta Protection Commission to align it with the co-equal goals, and also establish the Delta Conservancy to implement important parts of the Delta ecosystem improvement.

2. The letter, dated September 11, is found at: <http://www.deltavisionfoundation.org/reports.php>.

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This report includes analysis of selected features of SB 68 and AB 893 and comments comparing them to the *Delta Vision Strategic Plan*. Earlier analyses of earlier versions of bills ultimately combined in these two bills are available at the Delta Vision Foundation web site and are still relevant: <http://www.deltavisionfoundation.org/reports.php>. In most cases, section numbers from the five policy bills were carried forward into SB 68.

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The seven goals of the <i>Delta Vision Strategic Plan</i> and related strategies	SB 68 and AB 893 bill content (selected features) related to the seven goals and strategies of the <i>Strategic Plan</i>	Differences between this legislation and <i>Delta Vision Strategic Plan</i> recommendations
<p>Goal 1. Legally acknowledge the co-equal goals of restoring the Delta ecosystem and creating a more reliable water supply for California.</p> <p>Strategy 1.1: Make the co-equal goals the foundation of Delta and water policy making.³</p>	<p>SB 68: Defined at section 29702(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.”</p> <p>This language is closer to the Delta Vision Strategic Plan than was language in SB 12 and SB 458.</p> <p>AB 893: No recognition of the coequal goals is included.</p>	<p>SB 68: Missing is any requirement that state and local agencies are obligated to act in accord with the co-equal goals, as suggested by the <i>Strategic Plan</i> action recommendation 1.1.2. Also missing is a requirement that the co-equal goals must be included in state agency financing instruments, water contracts, etc., per recommendation 1.1.3.</p> <p>AB 893: Makes no mention of the coequal goals and provides no support for those goals. No mention of the Delta Stewardship Council, no linkage of projects funded to the Delta Plan and no requirements that recipients of bond funds advance the coequal goals.</p>
<p>Goal 2. Recognize and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place, an ac-</p>	<p>SB 68: Overall, provisions regarding Delta Protection Commission (sections 29703.5 through 32381) are intended to address Goal 2.</p>	<p>SB 68: Mixed progress in regard to Goal 2. The responsibilities of the Delta Protection Commission are confused by adding ‘economic sustainability’, and its current role as a regional</p>

3. ALL STRATEGIES BELOW ALSO CONTRIBUTE TO ACHIEVING THIS GOAL.

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<p>tion critical to achieving the co-equal goals.</p> <p>Strategy 2.1: Apply for federal designation of the Delta as a National Heritage Area, and expand the State Recreation Area network in the Delta.</p> <p>Strategy 2.2: Establish market incentives and infrastructure to protect, refocus, and enhance the economic and public values of Delta agriculture.</p> <p>Strategy 2.3: Develop a regional economic plan to support increased investment in agriculture, recreation, tourism, and other resilient land uses.</p> <p>Strategy 2.4: Establish a Delta Investment Fund to provide funds for regional economic development and adaptation.</p> <p>Strategy 2.5: Adopt land use policies that enhance the Delta's unique values, and that are compatible with the public safety, levee, and infrastructure strategies of Goal 6.</p>	<p>Strategy 2.1 is addressed at section 29756.5 in relationship to authorities of the Delta Protection Commission and also at section 85301(b)(1) in the context of the Delta Plan.</p> <p>Strategy 2.2 is addressed in section 2959(b)(2) for the Delta Protection Commission, at section 32301(i)(2) for the Delta Conservancy and at section 85301 as an element of the Delta Plan, where the Department of Food and Agriculture is charged to prepare a proposal on these issues for submission to the commission (section 85301(c)(2)).</p> <p>Strategy 2.3 is addressed by requiring the commission to develop an economic sustainability plan, a new requirement, at sections 29759 through 29761.5.</p> <p>Strategy 2.4 is addressed in section 29778.5 creating a Delta Investment Fund in the State Treasury, which links back to the commission plan at section 85301(b)(2).</p> <p>Strategy 2.5 is addressed through section 29703.5(b) expressing a need for a resources management plan and provisions for local government consistency with that plan are found at sections 29763 and 29773(a)(3). Section 85022(a) expresses legislative intent for land use actions in the Delta to be consistent with the Delta Plan.</p> <p>AB 893: Regarding the proposed 2010 bond, this language is included: Section 79730(a) includes "...preserve agricultural and recreational values in the Delta.." as a future management goal for the Delta. Section 7931(a)(2), allocating \$500,000,000 under the</p>	<p>body to address land use issues is thus diminished. The <i>Strategic Plan</i> recommended the DPC facilitate development of an economic development plan by the five Delta counties; this bill makes developing and implementing an economic sustainability plan a core responsibility of the DPC.</p> <p>Specific comments include:</p> <ul style="list-style-type: none"> • The provisions regarding the National Heritage Area are discretionary, not mandatory as suggested by the <i>Strategic Plan</i>. • State officials' membership on the Delta Protection Commission is reduced as a percentage of total membership. Additionally, state officials are allowed to appoint a "sole" alternate while local officials can appoint "an alternate" likely to result in less frequent representation by state officials. Voting rules are changed to require action by a majority of voting members (versus members present) creating a barrier to action.. <p>AB 893: Goal 2 and the associated strategies are largely ignored in this bill.</p>
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	<p>heading Delta sustainability includes “Assist in preserving economically viable and sustainable agricultural and other activities in the Delta.”</p> <p>The same language is repeated for the proposed 2014 bond.</p>	
<p>Goal 3: Restore the Delta ecosystem as the heart of a healthy estuary.</p> <p>Strategy 3.1: Restore large areas of interconnected habitats—on the order of 100,000 acres—within the Delta and its watershed by 2100.</p> <p>Strategy 3.2: Establish migratory corridors for fish, birds, and other animals along selected Delta river channels.</p> <p>Strategy 3.3: Promote viable, diverse populations of native and valued species by reducing risks of fish kills and harm from invasive species.</p> <p>Strategy 3.4: Restore Delta flows and channels to support a healthy Delta estuary.</p> <p>Strategy 3.5: Improve water quality to meet drinking water, agriculture, and ecosystem long-term goals.</p>	<p>SB 68:</p> <p>Sections 85001 through 85003 include findings and declarations regarding the importance of the Delta ecosystem as a healthy estuary.</p> <p>Section 85020(c) declares the objectives to be met in management of the Delta, to include “Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.”</p> <p>Section 85066, among definitions, states: “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.</p> <p>“Early actions” include ecosystem related language, including recommendations of “..Delta flow criteria and quantifiable biological objectives for aquatic and terrestrial species of concern dependent on the Delta” (section 85084.5), ecosystem restoration, including at least two named projects (section 85085) and collection of information on diversions and flow criteria necessary for the Delta ecosystem (section 85086).</p> <p>Section 85211 specifies Delta Plan performance standards,</p>	<p>SB 68:</p> <p>Many recommendations of the <i>Strategic Plan</i> are found in this section of the bill, which includes some authority in the areas identified as critical for ecosystem function (section 85302(e):</p> <p>Large areas of interconnected habitats are mentioned (<u>though no targeted amounts are specified; the Strategic Plan recommended on the order of 100,000 acres.</u>)</p> <p>Migratory corridors along selected Delta river channels, including needed flows of water at the right times.</p> <p>Reducing risks from invasive species.</p> <p>Restoring Delta flows and channels.</p> <p>Improve water quality.</p> <p><u>However, few of the specific action recommendations regarding Goal 3 are included in SB 68.</u></p>

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	<p>including for the ecosystem. Under provisions for the Delta Plan, the coequal goal is restated (section 85302) and attributes of a healthy ecosystem are listed (section 85302(c)).</p> <p>The five strategies (3.1 through 3.5) of the <i>Strategic Plan</i> become the basis of Delta Plan sub goals and strategies in section 85302(e). A sixth sub goal and strategy is generated by separate treatment of migratory bird habitat, included in other strategy 3.2 in the <i>Strategic Plan</i>.</p> <p>Regarding completion of the Bay Delta Conservation Plan, section 85320(b)(2)(A) includes a requirement that a reasonable range of flows required for ecosystem function be included in analyses.</p> <p>AB 893: Under provisions for “Delta Sustainability” improving Delta ecosystem health is listed as one of several goals for future management of the Delta (section 79730(a)).</p> <p>Section 79731(a)(7) allocating \$500,000,000 includes as (7) “Mitigate the <u>impacts</u> of water conveyance and ecosystem restoration.” (emphasis added)</p> <p>Funds are provided for activities associated with the Bay Delta Conservation Plan, including in section 79731(b) and under sections 79740 through 79747.</p> <p>Language at sections 79741.5, 79743, and 79744 include definitions and processes which could affect activities impacting ecosystem function.</p>	<p>AB 893: Overall, this bill is not consistent with the recommendations of the <i>Delta Vision Strategic Plan</i> regarding goal 3. Nor does it link effectively to the structures and processes in SB 68 related to this goal.</p> <ul style="list-style-type: none"> • The bill lacks an overall policy framework beyond that which can be inferred from the bill title and chapter headings. • The bill includes no references to the Delta Stewardship Council. • Proposed bond allocations are not linked to projects consistent with the Delta Plan. The Delta Plan is referenced only in regard to allocations to the conservancy (section 79731(c) and the parallel section for the 2014 bond, 79931(c)). • The reconstituted California Water Commission allocates funds in categories critical to the Delta Plan,
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		<p>most notably regarding Delta sustainability, but is not required to act consistent with the Delta Plan.</p>
<p>Goal 4: Promote statewide water conservation, efficiency, and sustainable use.</p> <p>Strategy 4.1: Reduce 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.</p> <p>Strategy 4.2: Increase reliability through diverse regional water supply portfolios.</p>	<p>SB 68:</p> <p>Section 1825 expresses legislative intent to encourage vigorous enforcement to prevent waste and unreasonable use and to enforce monitoring and reporting requirements. Section 1831(d)(4) adds violations of unreasonable use regulations and reporting or monitoring requirements to list of actions for which SWRCB can issue a cease and desist order.</p> <p>Part 2.55 of the bill generally addresses sustainable water use and demand reduction. Section 10608.4 establishes a statewide target to reduce urban per capita water use by 20 percent by 2020.</p> <p>Agricultural water suppliers (serving 10,000 acres or more of irrigated land) are to prepare agricultural water management plans. The bill requires all agricultural water suppliers to implement critical efficient water management practices (EWMPs), and requires additional EWMPs to be implemented in the measures are locally cost effective and technically feasible.</p> <p>Stronger penalties for failing to report water use, for example, the rebuttable presumption in section 5106(e), are consistent with action 4.2.4: "Request agencies to ensure that accurate and timely information is collected and reported on all surface water and groundwater diversions. . . ." The bill also establishes a groundwater monitoring program in Part 2.1.1, starting with section 10920.</p>	<p>SB 68:</p> <p>The provisions of this bill dealing with water conservation are largely consistent with Goal 4 of the Strategic Plan.</p> <p>Similarly, the provisions of the bill on water rights and groundwater monitoring are largely consistent with Goal 4.</p>

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	<p>AB 893:</p> <p>Section 79701(d) makes the finding that encouraging water conservation and recycling are commonsense methods to make more efficient use of existing water supplies.</p> <p>Sections 79721 et seq. provide \$750 million for grants to projects that implement an adopted integrated regional water management plan. \$150 million is allocated to Interregional funds, may be granted or expended, among other things, to meet state water recycling and water conservation goals.</p> <p>Section 79723 provides for drought relief projects, including water conservation and efficiency projects and water recycling projects.</p> <p>Section 79725 provides \$100 million for matching grants for water conserving agricultural drip irrigation systems.</p> <p>Chapter 10, Groundwater Protection and Water Quality, should result in increased water supply reliability. Projects are to prevent or reduce the contamination of groundwater that serves as a source of drinking water. Projects are to be consistent with an adopted integrated regional water management plan.</p> <p>Chapter 11 provides funds for water recycling and advanced treatment technologies.</p> <p>Similar provisions are contained in the 2014 bond act.</p>	<p>AB 893:</p> <p>Overall, this bill does provide funding for projects to promote statewide water conservation and efficiency, as called for in the Strategic Plan, <u>but it does not tie them to the 20 percent reduction by 2020 goal of the Governor.</u></p> <ul style="list-style-type: none"> Proposed bond allocations are not linked to projects which are consistent with the Delta Plan. The Delta Plan is referenced only in regard to allocations to the conservancy (section 79731(c) and the parallel section for the 2014 bond, 79931(c)).
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<p>Goal 5: Build facilities to improve the existing water conveyance system and expand statewide storage, and operate both to achieve the co-equal goals.</p> <p>Strategy 5.1: Expand options for water conveyance, storage, and improved reservoir operations.</p> <p>Strategy 5.2: Integrate Central Valley flood management with water supply planning.</p>	<p>SB 68:</p> <p>Anticipates new Delta water conveyance system in legislative finding and declaration (section 85004(b)), and improved water conveyance system and expanded water storage as a policy goal (section 85020(f)), and includes both conveyance and storage options as components of the Delta Plan (section 85304).</p> <p>This bill also establishes a number of conditions for approval of improved water conveyance, including approval of a changed point of diversion by the board (section 85088), and arrangements to pay related costs (section 85089).</p> <p>Chapter 2 of the bill focuses on the Bay Delta Conservation Plan, enumerating a number of criteria a proposed improved conveyance system must meet. Section 85320 states these as analyses of “a reasonable range” of alternatives, or potential effects of possible sea level rise of up to 55 inches and changes in precipitation and run off patterns, resilience to earthquakes, floods or other natural disasters and water quality.</p> <p>Regarding integration of flood management into water supply planning, general provisions are made in section 29759(b)(3) regarding the economic sustainability plan developed by the Delta Planning Commission, section 32376 in regard to the strategic plan of the Delta Conservancy, and in section 85320 in regard to BDCP planning of alternative conveyance.</p> <p>AB 893:</p> <p>This bill includes provisions addressing both improved Delta water conveyance and regional conveyance projects</p>	<p>SB 68:</p> <p>The provisions regarding decision making on conveyance and expanded water storage are largely congruent with recommendations in the <i>Delta Vision Strategic Plan</i>. However, the importance of investment and operating decisions which advance the coequal goals is critical here and should be restated. For example, the provisions regarding BDCP at sections 85300 through 85309 do not incorporate the coequal goals as the underlying requirement of success. Establishing the coequal goals as the foundation of policy making would bring this section into greater agreement with the <i>Strategic Plan</i>.</p> <p>Two significant actions recommendation in the <i>Strategic Plan</i> are not incorporated into this bill:</p> <p>5.2.1, which recommended that the operating rules of existing and new reservoirs must incorporate and reflect modern forecasting capabilities, and</p> <p>5.2.2, requiring the Department of Water Resources to immediately create a flood bypass along the lower San Joaquin River. This statutory direction is essential for DWR to rapidly pursue flood protection.</p> <p>AB 893:</p> <p>As noted earlier, this bill has only minor linkage to SB 68 and does not incorporate the integrated approaches rec-</p>
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	<p>to improve connectivity and water management and also authorizes expenditure of bond funds for local conveyance projects.</p> <p>Section 79716 reads: “Funds provided by this division shall not be expended to pay the costs of the design, construction, operation, or maintenance of Delta conveyance facilities. Those costs shall be the responsibility of the agencies that benefit from the design, construction, operation, or maintenance of those facilities.”</p> <p>However, funding is provided for water conveyance in both the 2010 and 2014 bonds, including (only the 2010 sections are identified; the section number for 2014 are in the 799xx series):</p> <ul style="list-style-type: none"> • Section 79723(a)(5), local and regional conveyance projects that improve connectivity and water management • 79724, local conveyance facilities south of the Delta <p>Money is also provided for the mitigation of impacts of water conveyance and ecosystem restoration (section 79731(a)).</p> <p>Increased water storage is also addressed in the bill, including:</p> <ul style="list-style-type: none"> • Section 79724 for groundwater storage south of the Delta • Section 79740 provides continuously appropriated funds for public benefits associated with surface or ground water storage projects. 	<p>ommended in the <i>Delta Vision Strategic Plan</i>.</p> <p>The specific authorizations included regarding improved water conveyance and storage are largely compatible with the <i>Strategic Plan</i>, IF they are developed and operated within the integrated recommendations of the <i>Strategic Plan</i>.</p> <p>This bill does not incorporate the proposals made under strategy 5.2 in the <i>Strategic Plan</i>, to integrate Central Valley flood management with water supply planning.</p>
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<p>Goal 6: Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and strategic levee investments.</p> <p>Strategy 6.1: Significantly improve levels of emergency protection for people, assets, and resources.</p> <p>Strategy 6.2: Discourage inappropriate land uses in the Delta region.</p> <p>Strategy 6.3: Prepare a comprehensive long-term levee investment strategy that matches the level of protection provided by Delta levees and the uses of land and water enabled by those levees.</p>	<p>SB 68:</p> <p>Section 29703.5 includes a finding and declaration intended to shift responsibility for preparation of the resources management plan from the Delta Protection Commission to the five Delta counties.</p> <p>Section 29773.5 requires the commission by July 1, 2010 to submit to the legislature recommendations regarding expansion or change to the primary zone, possibly intended to respond to strategy 6.2.</p> <p>Section 85020, paraphrases Goal 6 when it provides that one of the objectives of management of the Delta is to “reduce risks to people, property and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection.”</p> <p>Section 85305(a) requires that the Delta Plan promote effective emergency preparedness, appropriate land uses, and strategic levee investments. Section 85305(b) provides that the council may incorporate into the Delta Plan the emergency preparedness strategies for the delta developed by the California Emergency Management Agency. Thus the Delta Plan is to contain provisions to address Strategy 6.1.</p> <p>Regarding Strategy 6.2, Section 85022(a) provides: “It is the intent of the Legislature that state and local land use actions be consistent with the Delta Plan.” Section 85022(b) states that the actions of the council shall be guided by the findings, policies and goals expressed in this section when reviewing decisions of the Delta Protection Commission.</p> <p>Strategy 6.3 is addressed in Section 85306, which provides that the council, in consultation with the Central Valley Flood Protection Board, shall recommend in the Delta Plan</p>	<p>SB 68:</p> <p>Overall, this bill reduces the capacity of the Delta Protection Commission to integrate land use decisions into any coherent plan and also reduces state presence in the decision making of the Delta Protection Commission.</p> <p>The bill muddles relationships, including (a) giving individual counties responsibility for preparation of the Resources Management Plan, per Section 29703.5, which is at variance with section 29728.5 which leaves that responsibility with the Delta Protection Commission, and (b) no explanation of how the resources management plan should relate to the new economic sustainability plan, These issues are discussed below under Goal 7.</p> <p>The bill does not comply with Strategy 6.2, which seeks to “discourage inappropriate land uses in the delta region.” Specifically, the bill does not include the actions recommended in the Strategic Plan to carry out Strategy 6.2:</p> <ul style="list-style-type: none"> • “Immediately strengthen land use oversight of the Cosumnes/Mokelumne floodway and the San Joaquin/South Delta lowlands.” • “Immediately strengthen land use oversight for Bethel Island, the City of Isleton, and Brannan-Andrus Island.” • Immediately prepare local plans for at-risk locations within the primary zone: Walnut Grove (including the residential area on Grand Island), Locke, Clarksburg, Courtland and Terminous. • Immediately form a landowner consortium to create a new land use strategy that fosters recreation, increases habitat, reverses subsidence, sequesters carbon, improves handling of dredged material and continues appropriate agriculture on Sherman, Twitchell, and Jersey Island. <p>The proposed language relating to the primary zone of the</p>
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	<p>priorities for state investments in levee operation, maintenance, and improvements in the Delta.</p> <p>AB 893:</p> <p>Section 79731 provides \$1.5 billion for Delta sustainability. Some of the funds may be spent on projects and supporting scientific studies that do any of several things, including, (1) ensure that urban and agricultural water supplies derived from the Delta are not disrupted because of catastrophic failures of Delta levees, and (4) improve levee and</p>	<p>Delta (section 29773.5) does not focus on identified high risk areas and success requires action by both the commission and the legislature, which is not guaranteed.</p> <p>Recommended Council review of the Delta Protection Commission's resources management plan and DPC's and local land use decisions is not clear. If it is limited to the provisions of Chapter 3, Consistency of State and Local Public Agency Actions, Section 85225.25 is not strong enough to insure consistency.</p> <p>As drafted, it appears that if the council finds an agency plan inconsistent with the Delta Plan, the state or local agency can make its own revised certification of consistency, which is filed with the council. It is not clear that the council retains authority to make the final decision of consistency, and that the agency may not proceed with the action until the council <i>approves</i> the revised certification.</p> <p>Although section 85306 provides that the council, in consultation with CVFPB, will prioritize levee investments, the present language in section 85225.25 is unclear on whether or not the Council has the final say on consistency of levee projects proposed by DWR, CVFPB or local reclamation districts with the Delta Plan.</p> <p>AB 893:</p> <p>Overall, this bill is not consistent with the recommendations of the Delta Vision Strategic Plan regarding goal 6. While it does provide some funds for needed levee improvements, it does not link expenditures to the structures and processes in SB 68 related to this goal.</p> <ul style="list-style-type: none"> • The Delta Sustainability chapter mixes Delta
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	<p>flood control facilities and other vital infrastructure necessary to protect Delta communities.</p>	<p>levee/flood protection actions in with other Delta actions, without any prioritization or reference to the Delta Plan. There is no requirement that projects in this section, for levee improvements or other purposes, be consistent with the Delta Plan, except for funds appropriated to the Conservancy.</p> <ul style="list-style-type: none"> The bill includes no references to the Delta Stewardship Council determinations. SB 68, on the other hand specifically provides that the Delta Plan, prepared by the Council, is to prioritize Delta levee investments.
<p>Goal 7: Establish a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve these goals.</p> <p>Strategy 7.1: Establish a new California Delta Ecosystem and Water Council as a policy making, planning, regulatory, and oversight body. Abolish the existing California Bay-Delta Authority, transferring needed CALFED programs to the California Delta Ecosystem and Water Council. Establish a new Delta Conservancy to implement ecosystem restoration projects, and increase the powers of the existing Delta Protection Commission.</p> <p>Strategy 7.2: Require the California Delta Ecosystem and Water Council to prepare a California Delta Ecosystem and Water Plan to ensure sus-</p>	<p>SB 68: Strategy 7.1 is addressed as follows:</p> <ul style="list-style-type: none"> Section 85200(a) establishes the Delta Stewardship Council as an “independent state agency.” Section 85200(b) specifies seven council members, including four appointees of governor confirmed by the senate, one each from Senate Rules Committee and Speaker of the Assembly, and the Chairperson of the Delta Protection Commission, ex officio. Section 85034 transfers authority, obligations and programs of the California Bay Delta Authority to the council. Section 85210 enumerates “ordinary” powers of a state agency. Section 85225 addresses achieving consistency of state and local agency actions with the council adopted Delta Plan. Consistency requirements are limited to “covered actions” as defined in section 85057.5 – occurring within the boundaries of the Delta or Suisun Marsh, carried out, approved or funded by a state or local agency, having a significant impact on achieving one or both of the coequal goals or 	<p>SB 68: Overall, this bill will result in governance structures dramatically weaker than proposed in the <i>Delta Vision Strategic Plan</i>, with greatly reduced capacity to ensure effective public action to implement the recommendations of that <i>Strategic Plan</i>.</p> <ol style="list-style-type: none"> State agencies have no affirmative responsibility to support the coequal goals or to use their powers to implement a Delta Plan. The proposed Delta Stewardship Council will be no more effective than the current California Bay Delta Authority --- without capacity to bring agency actions into conformity with a Delta Plan and given no financing. The bill weakens the Delta Protection Commission by reducing the number of state representatives, crippling land use responsibilities and adding a new economic sustainability role, with confusing references to the economic sustainability plan and the resources management plan. . The bill creates a Delta Conservancy with insufficient capacity to effectively implement Delta ecosystem

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<p>tained focus and enforceability among state, federal, and local entities.</p> <p>Strategy 7.3: Finance the activities called for in the California Delta Ecosystem and Water Plan from multiple sources.</p> <p>Strategy 7.4: Optimize use of the CALFED Record of Decision and Coastal Zone Management Act to maximize participation of federal agencies in implementation of the California Delta Ecosystem and Water Plan.</p>	<p>or implementation of government-funded flood control programs, and excluding “a regulatory action of a state agency,” and “routine maintenance and operation of the State Water Project or federal Central Valley Project.”</p> <ul style="list-style-type: none"> • Critically, section 85225.25 provides state or local agencies the authority to decide whether to bring a covered action into compliance with council determination of consistency, “Upon remand, the state or local agency may determine whether to proceed with the covered action.” • Sections 32300 through 32381 create a “Sacramento-San Joaquin Delta Conservancy,” a state agency directed to “..support efforts that advance environmental protection and the economic well-being of Delta residents, including all of the following..” (a list of 12 goals and activities, only three of which are related to natural resources). The conservancy is provided with long lists of “may” provisions, mostly focused on administration of programs. Some “shall” sections address Delta resident and local government concerns. Section 32370 prohibits it from using the power of eminent domain. Section 32364.5(b)(4) requires grantees to “..provide payments in lieu of taxes, assessments, or charges otherwise due to elements of local government.” 	<p>restoration and also muddles its responsibilities by adding economic sustainability roles.</p> <p>Specific comments by Strategic Plan action item:</p> <p><u>7.1.1, regarding creation of the council and its roles and powers:</u></p> <p>Section 85057.5 reduces the scope of the Delta Plan to “covered activities” and <u>excludes</u> “regulatory actions of a state agency.” The last term excludes an unknown large number of state actions from any Delta Plan. For example, 357 bills in the current legislative session include reference to “regulatory.”⁴</p> <p>The provisions for Council membership in Section 85200 will result in less state representation than in the recommendations of the <i>Strategic Plan</i>.</p> <p>Section 85225.25 removes any power for the council to determine the consistency of actions by a state and local agency with the Delta Plan.</p> <p><u>7.1.2, regarding establishing a Delta Conservancy:</u></p> <p>Section 32322 broadens the mission of the conservancy far beyond natural resources to encompass economic development functions as well. As currently drafted, only three of a dozen activities assigned to the conservancy deal with natural resources.</p> <p>Section 32360 establishes a Sacramento-San Joaquin Delta Conservancy Fund, institutionalizing the division in the conservancy’s roles by creating ecosystem restoration and economic sustainability programs with different funding streams.</p> <p>Section 32376 further institutionalizes the fractured char-</p>
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4 . Determined by a search for the term “regulatory” on the legislative bill information site: <http://www.leginfo.ca.gov/bilinfo.html>

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		<p>acter of the proposed conservancy, requiring it to develop a strategic plan which is consistent with five other named plans. The Delta Plan is included, but not given any priority.</p> <p><u>7.1.3, regarding strengthening the Delta Protection Commission.</u></p> <p>Section 29703.5(a) is a legislative finding and declaration the DPC is “..an existing forum for Delta residents to engage in decisions..” recasting the current state and local mission to a local focus.</p> <p>Section 29735 reconstitutes the membership of the DPC, reducing the size from 23 to 15 members. The new DPC would have a larger fraction of elected Delta local government officials (or their appointees), at 11 of 15 vs. 13 of 23 on the old DPC. The four state officials may make “sole designee,” while local officials may make “a designee.”</p> <p>Section 29739 requires the chair of the DPC to be an elected county supervisor and provides that person shall serve for two years and also be a member of the Delta Stewardship Council.</p> <p>Section 29751 redefines a voting majority from “of voting members present” to “of voting members,” increasing the likelihood of paralysis and inaction.</p> <p>The <i>Strategic Plan</i> recommendations that the DPC exercise direct project consistency review within the Primary Zone (as does the Bay Conservation and Development Commission) and also over specific high-flood threatened areas in the secondary zone until improved local plans for those areas are developed are not incorporated in this bill.</p> <p><u>7.1.4, regarding creation and roles of the Delta Science</u></p>
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		<p><u>and Engineering Program and Board:</u></p> <p>The recommendations regarding adding engineering competences are not addressed and specific recommendations regarding work to be undertaken are not incorporated in the bill.</p> <p><u>7.1.5, regarding improved compliance of diversions and water use with existing laws:</u></p> <p>Sections 1051 through 5106 will improve compliance with existing laws but do not incorporate some specific recommendations in the <i>Strategic Plan</i>.</p> <p><u>7.2.1, Develop a legally enforceable Delta Plan:</u></p> <p>SB 68 does not incorporate the core recommendation that <i>“All state, regional and local agencies with planning responsibilities should be required to carry out their actions in conformity with the CDEW Plan, while providing the flexibility needed to meet the Delta’s management challenges.”</i>⁵ No general obligation of state agencies to use their power to advance the Delta Plan is provided in SB 68.</p> <p>Section 85022 provides intent language to bring Delta land uses into consistency with the Delta Plan, but does not include the requirement to do so or tools for that purpose.</p> <p>Section 85057.5 defines “covered” actions which are potentially subject to review for consistency with the Delta Plan narrowly and section 85057.5(b) excludes “regulatory actions” by a state agency and “routine operation and maintenance of the State Water Project or the federal Central Valley Project.” The combination of a narrow definition and a potentially large area of exclusion will yield a weak Delta Plan.</p> <p>As noted above, the provisions for consistency of state and local public agency actions with the Delta Plan in section</p>
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	<p>AB 893:</p>	<p>85225 are not effective, as state and local agencies can apparently accept or reject any council assessment of a covered action.</p> <p>Sections 85300 through 85309 provide more details regarding preparation of and elements in the Delta Plan. These provisions are largely consistent with the topics recommended in the Strategic Plan. However, neither legal authority, nor control over funds is provided to ensure cooperation of other state and local agencies.</p> <p>Section 85320 through 85321 provides criteria by which the Bay Delta Conservation Plan may be incorporated into the Delta Plan, with only modest provisions for review and comment by the council.</p> <p>Section 85350 provides that “..other completed plans..” may be incorporated into the Delta Plan, but provides no authority or tools to make those plans more consistent with the Delta Plan.</p> <p><u>7.2.2 and 7.2.3, regarding the science program, science board and adaptive management:</u></p> <p>Section 85280 is generally consistent with the recommendations of the <i>Strategic Plan</i>.</p> <p><u>7.3.1 through 7.3.3 regarding finances:</u></p> <p>Section 85304 transfers operating responsibilities of the California Bay Delta Authority to the proposed Delta Stewardship Council, presumably including related appropriations and authorized positions, but that is not stated. Nothing in SB 68 provides additional funding for operations of the council, preparation of the Delta Plan or implementation of that plan.</p>
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	<p>Includes no references to the Delta Stewardship Council.</p> <p>Includes no references to the Delta Protection Commission.</p> <p>Contains two identical references authorizing appropriation of funds to the Sacramento-San Joaquin Delta conservancy for implementation (“..of projects under Chapter 7. Delta Sustainability”) consistent with the Delta Plan. The reference in section 79731(c) is under the bond act of 2010 and the reference in section 79931(c) is under the bond act of 2014.</p> <p>Includes provisions for purchase of water rights for ecosystem protection and restoration (section 79731(b)(2) and 79755(b)) or “public trust resources” (section 79755(b)).</p>	<p>AB 893:</p> <p>This bill is not linked to the policies in SB 68 and incorporates none of the recommendations in the <i>Delta Vision Strategic Plan</i> regarding more effective integration of financing into policy implementation.</p> <ul style="list-style-type: none"> • The bill lacks an overall policy framework beyond that which can be inferred from the bill title and chapter headings. • The bill includes no references to the Delta Stewardship Council. • Proposed bond allocations are not linked to projects consistent with the Delta Plan. The Delta Plan is referenced only in regard to allocations to the conservancy (section 79731(c) and the parallel section for the 2014 bond, 79931(c)). <p>The reconstituted California Water Commission allocates funds in categories critical to the Delta Plan, most notably regarding Delta sustainability, with a requirement their actions be pursuant to the coequal goals, and consistent with the Delta Plan. However, no mention is made of the Delta Stewardship Council determining consistency.</p> <p>The provisions for purchase of water rights include no policy framework of State Water Rights Board determinations of required stream flows. The <i>Strategic Plan</i> recommended “Create no expectation of public payment for any water required for ecosystem revitalization” (action 7.3.1.d). Without appropriate policy context, the language in the bond bill can have that effect, at variance with California law and repeating the failures of the Environmental Water Account policies.</p>
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