

# Alert – Comments on final Delta/water legislative bills

Issued September 28, 2009

On September 11, 2009, the California legislature considered and failed to approve a combined Delta/water policy bill (SB 68) and a water bond bill (AB 893).

The Delta Vision Foundation Board issued a preliminary letter earlier that same day, noting the progress made in the bills but concluding the package was not in substantial agreement with the major goals or recommendations of Delta Vision.

An extensive analysis of the final legislative package in comparison to the *Delta Vision Strategic Plan* concludes:

1. Some sections of SB 68, the policy bill, are close to the recommendations of the *Delta Vision Strategic Plan*, especially regarding (a) establishing stream flow requirements into the Delta, (b) improving information regarding water use and improved compliance with water use laws, and (c) water conservation and (d) groundwater reporting.
2. The sections of SB 68 which define a Delta ecosystem are close to the *Strategic Plan* recommendation, but lack a clearly stated goal of preserving approximately 100,000 acres of land by the year 2100. In general, SB 68 does not incorporate detailed recommendations from the *Strategic Plan*.
3. Sections of SB 68 fail to achieve an effective system of governance in the Delta. SB 68 would ultimately create a weak Delta Stewardship Council and a Delta Plan of limited scope, but provides no legal requirement that state agencies use their resources and programs to advance the Delta Plan or the co-equal goals, and includes no effective procedures by which state and local agency actions would be made consistent with the Delta Plan.

Additionally, the proposed Delta Conservancy has only a limited ecosystem restoration focus, since its mission is muddled by including ‘economic sustainability’ as an activity. This approach conflicts with other provisions of the bill that require the Delta Protection Commission to develop and implement an economic sustainability plan for the Delta. An effective conservancy focused on ecosystem restoration consistent with the council approved Delta Plan should be established.

4. AB 893, the bond bill, provides no financing sources for the council, whether for preparation of a Delta Plan, or for implementation of that Plan. In general, AB 893 fails to tie taxpayer spending to the policies adopted in SB 68 and reflects no recommendations of the *Delta Vision Strategic Plan*. This failure in AB 893 leads to ineffective use of bond funds and unnecessary policy conflicts.
5. Some elements of the proposed bills weaken the role of the existing Delta Protection Commission, resulting in worse outcomes. SB 68 would reduce state representation on the Delta Protection Commission, for example, and changes in appointments of alternates and voting rules compound that reduction. As previously mentioned, the Delta Protection Commission would also be assigned a new role to develop and implement an economic sustainability plan for the Delta. The existing language in SB 68 does not clearly delineate between that plan and the Commission’s historic land use roles structured around its resource management plan. The primacy of land use determinations should be preserved as the key role of the Delta Protection Commission.

Moreover, the recommendations in the *Delta Vision Strategic Plan* to address flood and other risks in ten named areas of the secondary zone—ranging from the Cosumnes/Mokelumne floodway to Terminous—are not addressed effectively. Overall, SB 68 would weaken state and local government stewardship of the Delta primary zone and does not address known risks in the secondary zone as effectively as is possible.

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Phil Isenberg, Chair of the Delta Vision Foundation, commented: “California has been in political deadlock over water and the Delta for almost 30 years. It was encouraging to see the Governor and Legislature embrace the seven Goals of the Strategic Plan. However, last minute changes of these bills before the legislature weakened them dramatically. Perhaps most important, critical issues regarding effective financing and a clear governance were ducked.”

He continued: “The Delta Vision Foundation believes that three decades of inaction strongly suggest the need for a new approach --- one that is integrated and comprehensive. The *Delta Vision Strategic Plan* remains the best path forward for California. We believe the Governor and Legislature can and should adopt a comprehensive approach to the water reliability problems of California and the ecosystem concerns of the Delta. This is not a situation where delay benefits any interest or region of the state.”

It is possible to bring SB 68 and AB 893 into closer agreement with the recommendations of the *Delta Vision Strategic Plan*. Language included in earlier versions of both the policy and the bond bills which could serve that purpose was previously described.<sup>1</sup> Language regarding state and local agency consistency with the Delta Plan is available in the September 9<sup>th</sup> version of SB 12, for example. Language regarding financing is available in Pre-print SB 1 of August 4, 2009. Additional opportunities for improved language may be gleaned from the attached analysis.

Additionally, a few broad additions to these bills could achieve greater integration of the two bills, closer correspondence to recommendations of the *Delta Vision Strategic Plan* and speed progress in implementing the bills. Examples include:

- To achieve greater integration of AB 893 with SB 68: In AB 893, add a new section under *Chapter 4. General Provisions* requiring that “Any expenditure of bond funds shall be consistent with relevant provisions of the Delta Plan.”
- To generate state agency actions in support of the Delta Plan, in SB 68, under *Chapter 3, Miscellaneous Provisions* add “All state agencies shall act in accord with the Delta Plan and exercise their authority to support effective implementation of that Plan.”
- To speed development of the Delta Plan, modify language in section 85300 of SB 68, “In developing the Delta Plan, the council shall ~~consider~~ take as a starting point the strategies and actions set forth in the Strategic Plan, and may include any of those strategies or actions in the Delta Plan or develop more effective actions to achieve the related goal.”

The Delta Vision Foundation is the successor to the Delta Vision Blue Ribbon Task Force, the independent body established under Governor’s Executive Order S-17-06. The Blue Ribbon Task Force held over 30 days of public meetings over two years, and involved hundreds of stakeholders, scientists and members of the public in its processes. It issued *Our Vision for the California Delta* (2007) and the *Delta Vision Strategic Plan* (2008). The Delta Vision Committee (cabinet officers) issued its *Delta Vision Committee Implementation Report* (2008) supporting almost all of those recommendations.

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1 . See materials at the Delta Vision Foundation web site: <http://www.deltavisionfoundation.org/reports.php>