

## 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. 3 (SB 3p)* – Delta Conservancy and Delta Protection Commission – formerly 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 changes. All seven goals of the *Delta Vision Strategic Plan* are now addressed. Almost all 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 appointments to the Delta Stewardship Council 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 3p) 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.

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: <sup>1</sup>	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.	A-	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 3p: Section 29702 (coequal goals)	Overall, effective provisions to satisfy Goal 1. AB 1p and SB 1p, Section 85054, and SB 3p, section 29702, adds the Delta as evolving place to the two goals of ecosystem function and reliable water supply.
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 3p: 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.	A-	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)	Overall, effective provisions to satisfy Goal 3. Effective provisions on instream 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.
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. 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.	A	AB 1p and SB 1p: Section 85020(b)(7) AB 1p: Section 85304 (water conveyance and storage)	Overall, effective provisions to satisfy Goal 5. 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.
6. Reduce risks to people, property and state interests in the Delta by effective emergency preparedness, appropriate land uses and strategic levee investments.	A-	AB 1p and SB 1p: Section 85020(b)(8) AB 1p: Section 85305 (risk reduction, including levees and flood protection) SB 3p: Section 29760(b)(1) (first listed element to be addressed in DPC Resources Management Plan) and Section 29765(a)(6) (local general plans cannot increase flood hazard)	Overall, effective provisions to satisfy Goal 6.
7. Establish a new governance structure with the authority, responsibility, accountability, science support and secure funding to achieve these goals.	B+	AB 1p and SB 1p: Section 85020(b)(9); Section 85066. SB 1p: Sections 85200 through 85407 (establishes Council, Delta Watermaster, Independent Science Board and a financing system). 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) SB 3p: 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.	Overall, effective provisions to satisfy Goal 7. The powers of the proposed Council in SB 1p and the provisions for a Delta Plan in AB 1p are 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. There is no provision to ensure the independence of the Council.

<sup>1</sup> 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.

	<p>SB 3P: 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>	
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**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.” The addition of language regarding “.the unique cultural, recreational, and agricultural values of the Delta as an evolving place” diverts focus from the primary state goals in these policies. The Delta Vision Strategic Plan addressed the importance of the Delta as a place in Goal 2 and the specific strategies of that Goal and addressed many of the risks to the Delta in Goal 6.
2. Appointments to the Delta Council are best made by the Governor with Senate approval, as recommended in the *Delta Vision Strategic Plan*. SB 3p proposes four appointments by the Governor, one by the Speaker of the Assembly and one by the Senate Committee on Rules. The seventh Council position would be filled by the Chairperson of the Delta Protection Commission, ex-officio. This provides fractured accountability and is inconsistent with the statewide charge given the Council in these preprint bills and in the *Delta Vision Strategic Plan* recommendations.
3. Ensure the independence of the Delta Council by explicitly stating that it is independent and that members serve for fixed terms.
4. Include targets for habitat restoration, critical for ecosystem function in the Delta estuary. The Task Force specifically recommended a target of approximately 100,000 acres in protected status by the year 2100, and noted that 43,000 acres are currently owned by various government entities.
5. Ensure 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. One option is to establish processes for decisions on fees and expenditures similar to those used in the federal Base Reuse and Closure Act.

**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,<sup>2</sup> 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.

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<sup>2</sup>. *Delta Vision Strategic Plan* (October 2008). Pages 50-52.