

Alert – Senator Cogdill’s Bill dated 9.3.09

Issued September 7, 2009

This draft bill incorporates selected governance elements into SB 371 and amends various provisions of that bill.¹

Laudably, the bill is beginning to provide a policy framework for bond expenditures by providing a limited role for the proposed council in allocating bond funds related to Delta sustainability (section 79770(c)).² Consistent with tradition, however, most elements in this bill remain a series of allocations with little policy rationale.

The bill does not reference or incorporate all seven goals of the *Delta Vision Strategic Plan* as a policy foundation. The bill recommends actions consistent with several goals consistent with the *Delta Vision Strategic Plan* but then limits their scope or cripples implementation.

For example, Section 79742 adopts the Delta Vision Strategic Plan definition of **co-equal goals** (restoration of the Delta ecosystem and creation of a reliable water system for California) as “..the foundation of the Delta and water policy.” However, section 79750 defines restoration in reference to listed species only, a dramatic limitation at odds with any professional definition of ecosystem. The ecosystem definition in AB 39 is much closer in meaning to the *Delta Vision Strategic Plan*.

On **governance**, section 79760 creates a “Delta Independent Governing Council” consisting of seven Governor’s appointees charged to prepare a long term “Delta Plan.” The council receives and allocates funds for actions covered in the Delta Plan including bond funds dedicated to Delta sustainability purposes and has “..exclusive authority to decide, on appeal, the consistency of any action, program, project or activity ... with the Delta Plan.”

However, the appeal authority is circumscribed and muddled. Importantly, the responsibility of state and local agencies to implement the Delta Plan is limited to “maximum extent possible” in section 79793(e), which conflicts with our recommendations.

Most critically, the appeal authority proposed does not provide the council authority to determine consistency of state or local actions with the Delta Plan. Once the Delta Plan is adopted, state and local agencies self certify that actions are consistent with the Delta Plan. Any appeal must be made within 30 days and review is limited to the certification. If the council upholds the appeal, it remands the issue to the relevant agency with specific findings within 60 days.

Section 79823(c) provides that the state or local agency “..may reject the findings based on a determination by the agency’s director or governing board that the findings are inconsistent with existing law or substantially negate the proposed purpose of the...action.” **In short, the agency originally proposing the action ultimately judges its consistency in terms of the action’s own purposes, which is very unlikely to result in an effective Delta Plan.**

Section 79800(a) refers to a Bay-Delta Conservation Plan that is consistent only with a “feasible” conservation standard, not the NCCP standard that the parties have put forward as the “gold standard” of conservation plans. The Council is *required* to incorporate the Bay Delta Conservation Plan in the Delta Plan upon approval by the Department of Fish and Game, **thus removing any council role with regard to major elements of the Delta Plan that will be critical to meeting the coequal goals.**

As a general approach, bond bills are not favored for policy making, as they require a 2/3 majority vote in contrast to the simple majority requirement of a non fiscal bill. A preferable strategy would be to have the bond bill incorporate language making allocation and use of funds consistent with the processes (e.g., oversight by a Delta Coun-

1 . This bill is not available on the Legislature’s bill web site, Senator Cogdill’s office page, or the 2009 Water Conference Committee web site. It is available at the Delta Vision Foundation web site: <http://www.deltavisionfoundation.org/index.php>

2 . The council role will apparently be circumscribed as much, if not most, of the “Delta sustainability” funds will support BDCP.

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cil) and programs or activities developed through those processes (e.g., the Delta Plan) developed in the non fiscal bill.

This bill can be improved by incorporating recommendations of the *Delta Vision Strategic Plan*. On governance, for example, there is no provision for a Delta Conservancy. As noted earlier, proposed restoration of the Delta ecosystem falls far short of that proposed in the *Delta Vision Strategic Plan* or the *Ecosystem Restoration Plan*. Section 79761(c) needlessly limits hiring council staff. Other sections raise technical issues requiring analysis and effective policy making. For example, how does section 79714(c) affect proposed fee based revenue systems?