

Analysis for Joint Hearing, August 25, 2009

| Agenda item | Preprint bill content (abbreviated) | <i>Delta Vision Strategic Plan</i> recommendations | Comment |
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| I. AB 39 (Huffman) Preprint Assembly Bill 1 | | | |
| A. Legal Framework: Co-Equals | <p>Section 85020 establishes coequal goals as “standard for long-term management of Delta water and environmental resources” (a), and lists nine objectives as “inherent in the coequal goals” (b).</p> <p>Section 85201 establishes state policy to reduce dependence on water from Delta watershed over long term, for water supply reliability</p> <p>Section 85054 defines coequal goals in terms of a reliable water supply and the restoring Delta ecosystem, stating these are to be achieved in a manner that protects and enhances Delta as an evolving place.</p> | Strategy 1.1: Make the co-equal goals the foundation of Delta and water policy making. (and three action items) | <p>Section 85020: Nine objectives in PAB 1 mirror the seven goals of the Delta Vision Strategic Plan, adding water quality (# 5) and water use balance (# 6).</p> <p>Section 85201: Largely consistent with <i>Strategic Plan</i> (page vi) but more specific. Also consistent with recommendation 7 of <i>Vision for the Delta</i> (2007).</p> <p>Section 85054: Largely consistent with <i>Strategic Plan</i> which made Delta as place goal 2.</p> <p>Overall, PAB 1 language is closer to Delta Vision Strategic Plan than is PSB 1, section 85054, which establishes three coequal goals (adding Delta as evolving place).</p> |
| B. Early Actions: Instream Flow Determinations | <p>Section 85084 sets April 1, 2010, as deadline for Department of Fish and Game to submit available information and any recommendations on instream flow needs to the State Water Resources Control Board.</p> <p>Section 85086 establishes accelerated processes to establish instream flow needs for ecosystem and water quality needs, detailing responsibilities of the Board and the De-</p> | Action 3.4.1 recommended charging the Department of Fish and Game to complete recommendations within the Delta watershed by 2012 and for all major rivers and streams by 2018 (Delta Vision Strategic Plan, page 85). | PAB 1 adds specifics to the recommendations of the Delta Vision Strategic Plan and requires completion of instream flow requirements for the Sacramento River watershed before the Board may issue any changes in points of diversion for the State Water Project or Central Valley Project. |

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| | <p>partment of Fish and Game. Determinations of instream flows for the Sacramento River watershed by June 30, 2010, the balance of the Delta watershed would be completed by 2012 and other major rivers and streams outside the Delta watershed by 2018. The board may not grant any petition for change a point of diversion for the State Water Project or Central Valley Project before determining instream flow needs of the Sacramento River watershed (section 85086(c)(2)).</p> | | |
| <p>C. Bay-Delta Conservation Plan: Requirements & Approvals</p> | <p>Section 85320 establishes the requirement that BDCP satisfy the Natural Communities Conservation Planning Act, gives the Delta Stewardship Council authority to certify the final environmental impact report, requires review by the Delta Independent Science Board, and details analyses, alternatives and objectives which the BDCP must include.</p> <p>Section 85321 requires the Delta Independent Science Board to complete annual evaluations of how BDCP achieves its objectives, with reports to the Legislature and BDCP permitting agencies.</p> | <p>Action 5.1.1 recommends directing the Department of Water Resources and allied agencies to further investigate the feasibility of a dual conveyance facility building on BDCP. That action recommendation lists 11 elements to be considered.</p> | <p>Section 85320 is largely consistent with the recommendations of Action 5.1.1 and also the twelve recommendations included in a letter from the Delta Vision Blue Ribbon Task Force to Governor Arnold Schwarzenegger dated June 30, 2008, Appendix B.¹</p> <p>However, Section 85320 (j)(2)(A) adds a required objective for BDCP to meet the fisheries goals of existing species recovery plans and the state and federal salmon doubling goal.</p> |

¹. See: http://www.deltavision.ca.gov/BlueRibbonTaskForce/June2008/Item_13_Attachment2.pdf

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| II. SB 12 (Sim- itian) Preprint Senate Bill 1 | | | |
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| A. Governance: Council Structure & Authority | <p>Sections 85200 through 85204 establish a Delta Stewardship Council of seven members, including four appointed by the Governor, one by Senate Committee on Rules, one by the Speaker of the Assembly, and one member shall be the Chairperson of the Delta Protection Commission.</p> <p>Sections 85210 through 85218 establish the mission, duties and responsibilities of the council and include provisions regarding the responsibility of state agencies, departments, boards and commissions to adhere to the council adopted plan. Section 85212 includes authority for the council to “require a remedy” to actions or omissions contrary to the plan.</p> | <p>Strategies and action recommendations under Goal 7 propose creation of an independent 5-7 member California Delta Water and Ecosystem Council and detail the roles and authorities of that council. The Governor would make all Council appointments subject to senate approval.</p> <p>The council’s primary role would be developing and implementing a legally enforceable California Delta Water and Ecosystem Plan.</p> | <p>PSB 1 includes a major change in the appointment authorities for council members.</p> <p>The provisions for developing the Delta plan appear workable.</p> <p>The provisions to achieve consistency of actions by other state agencies appear workable but the authority of the council to ensure consistency of action with the Delta plan must be ensured.</p> |
| B. Governance: Water Master Authority | <p>Section 85230 requires board appointment of a special water master from among nominees from the council.</p> <p>Section 85231 establishes the Watermaster as an agent of the board with the board’s statutory authority to direct daily operations of surface water diversions in the Delta watershed and further details specific authorities and duties.</p> <p>Section 85232 establishes an appeal process from Watermaster decisions, first to an administrative law judge and then to the full board.</p> | <p>The Delta Vision Strategic Plan includes recommendations regarding the board under Goals, 3, 4 and 5. The Strategic Plan does not include a recommendation for a water master.</p> | <p>An interesting proposal to facilitate board action.</p> |

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| <p>C. Water Conveyance Decision</p> | <p>Section 85319 requires any water conveyance facility proposed to be constructed within or around the Delta to be approved by the council, following specified determinations that (1) the board has adopted in-stream flow determinations for the Sacramento River and waterways within the Delta, (2) each water agency that relies on water exports from the Delta watershed has submitted to the council a contingency plan for drought and a long-term plan for reducing reliance on such exports, and (3) the proposed water conveyance facility will be operated in a manner consistent with achieving the coequal goals.</p> | <p>Action 5.1.2 recommends that the Department of Water Resources, the Department of Fish and Game and other allied agencies make a recommendation regarding water conveyance by the end of 2010. They are also to “Develop a long-term action plan to guide design, construction, and operation, and present the recommendation and plan to the California Delta Ecosystem and Water Council for a consistency determination.”</p> | <p>Adds a requirement for council role in approval of any water conveyance facility.</p> |
| <p>D. Delta Finance</p> | <p>Section 85400 provides definitions focused on public and private beneficiaries.</p> <p>Sections 85402 through 85403.5 detail council preparation of an annual expenditure plan for its administration and programs and projects included in the Delta Plan.</p> <p>Section 85404 establishes financial responsibilities of the State Water Project and the Central Valley Project.</p> <p>Section 85405 provides for a fee applying to all users of water within the Delta watershed, regardless of form of water right. The Council sets the fee based on the annual expenditure plan.</p> <p>Section 85407 provides the revenue bond authority to the council.</p> | <p>Strategy 7.3 includes three action items:</p> <p>Action 7.3.1: Enact a series of principles regarding design of financing...</p> <p>Action 7.3.2: Establish a base of revenues outside the state general fund...</p> <p>Action 7.3.3: Find new sources of revenues</p> | <p>PSB 1 advances a beneficiary pays approach to financing capital projects, consistent with recommended Action 7.3.1.</p> <p>Fee authority is consistent with Action 7.3.2, but does not include a fee for conveyance through or around the Delta.</p> <p>PSB 1 does not include recommendations on finances as a policy and management tool for implementation of the Delta Plan, provisions to protect funds from diversion to other purposes nor non traditional sources of revenues.</p> |

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| <p>III. SB 458 (Wolk) Preprint Senate Bill 4</p> | | | |
| <p>A. Delta Protection Commission: Relationship to Council and Local Governments</p> | <p>Section 29703.5 finds and declares that the Delta Protection Commission is the appropriate agency to identify and provide recommendations to the council regarding the Delta and for the five Delta counties to establish and implement a resources management plan for the Delta.</p> <p>Section 29756.5 authorizes the commission to act as facilitating agency for habitat restoration or enhancement programs located in the primary zone while Section 29759 requires the commission to do develop a regional economic development plan based on local plans.</p> <p>Section 29760 defining the commission's main policy document, the resource management plan, is greatly revised. All reference to land use is removed and replaced with a focus on socioeconomic sustainability of the Delta region. The 14 previous requirements are reduced to (1) public safety, such as flood protection recommendations, (2) economic elements of local general plans...including ...sustainability of agriculture and its infrastructure and legacy communities, (3) comments and recommendations to the Department of Water Resources concerning its flood management plan for the Delta and (4) PLACEHOLDER.</p> <p>Section 29761.6 calls on the commission to</p> | <p>Action 7.1.3 included recommendations to strengthen the Delta Protection Commission, structured to ensure that commission plans and policies were consistent with the Delta plan and that the commission ensured that local government plans and projects were similarly consistent.</p> <p>Strategy 6.2 discourages inappropriate land uses in the Delta, including roles for the commission. Action 6.2.1 calls for the commission to exercise direct consistency review over proposed projects in the Cosumnes/Mokelumne floodway and the San Joaquin/South Delta lowlands until local governments develop plans for these areas consistent with the Delta plan.</p> | <p>PSB 4 would result in a radically changed Delta Protection Commission, with changed mission, changed authorities, and changed governance. The proposals are a large departure from the recommendations of the Delta Vision Strategic Plan and would not ensure consistency with the Delta plan.</p> <p>The thrust of this bill is economic development of the Delta, reflected in the changed resource management plan where the absence of other policy goals makes that policy document unavailable for achieving consistency with the Delta plan which must include other goals, including ecosystem restoration, water supply reliability, and levee investments.</p> <p>Overall, the provisions of PSB 4 reduce the commission roles in land use decisions, increasing the likelihood of what the Delta Vision Strategic Plan identified as "inappropriate" land uses because of risks from floods and conflicts with increased water supply reliability or ecosystem restoration.</p> <p>Section 29773 specifies roles for the commission in identifying and making recommendations for changes to projects within the scope of the Delta plan</p> |

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| | <p>develop a proposal to “protect, enhance, and sustain the unique and enduring cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving ecosystem.” That plan shall include a regional economic plan. It is to be submitted to the council to be evaluated for incorporation into the Delta plan.</p> <p>Section 29763 details requirements for commission review of local general plans, emphasizing restrictions on agricultural practices in the primary zone, enumerating 10 specified prohibitions (including some not clearly linked to agriculture, such as adversely impacting navigation). If the commission finds the general plan not consistent with the resources management plan, it remands the plan to the local government with findings on items to be addressed and the local government has 120 days to make changes and resubmit.</p> <p>Sections 29764 through 29771 address the relationship between the commission and local governments regarding land use in the primary zone, including authorizing development in the primary zone which meets specified criteria until the commission approves local general plans or plan amendments.</p> <p>Section 29773 empowers the commission to review and make comments on any significant project or proposed project within the scope of the Delta plan, specifying that the council shall consider these recommendations in a public hearing and make findings</p> | | <p>to the council and specifies how the council is to respond to such recommendations from the commission. This invites conflict between the commission and the council, at great expense to the state.</p> |
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| | <p>regarding incorporating the recommendations the recommendations into the proposed project and whether the recommendations are consistent with the Delta plan.</p> <p>Section 29773.5 requires the commission to recommend to the legislature by January 1, 2012, whether six named areas should be added to the primary zone.</p> | | |
| <p>B. Conservancy: Scope of Authority And: C. Conservancy: Ecosystem Restoration & Economic Development²</p> | <p>Section 32320 creates a Sacramento-San Joaquin Delta Conservancy in the Natural Resources Agency and Section 32322 enumerates 12 efforts which it can support to advance both environmental protection and the economic well-being of Delta residents in a complementary manner.</p> <p>Sections 32360 through sections 32381 detail the authorities of the conservancy. Those are wholly facilitative and largely discretionary (e.g., “the conservancy may..”). The conservancy is prohibited from acquiring a fee interest in real property and shall not exercise the power of eminent domain.</p> <p>Section 32376 requires the conservancy board to prepare and adopt a strategic plan within two years after hiring an executive office. That plan is to establish priorities and criteria for projects and programs. It is to be consistent with five named plans.</p> | <p>Action 7.1.2 called for establishing a California Delta Conservancy “as early as possible in the 2008 legislative session.” The proposed conservancy is clearly responsible for coordinating state ecosystem-related and urban waterfront projects in the Delta, Suisun Marsh and local plan areas. For the Suisun Marsh, integration with the authority of the Bay Conservation and Development Commission is given first priority. The conservancy has effective authority to acquire or manage land needed to implement the Delta plan. It is also asked to support appropriate related activities in the Delta (e.g., recreation) and to create incentives for mutually beneficial mixtures of traditional agriculture, habitat and recreation.</p> | <p>The conservancy proposed in PSB 4 is unlikely to effectively implement the ecosystem improvements being developed in any of the current policy processes (Delta Vision, the Bay Delta Conservation Plan, or the Ecosystem Restoration Program). Its mission is fragmented to include economic well being of Delta residents, departing from the natural resource enhancement mission of other California conservancies. It lacks sufficient capacity to manage large scale ecosystem restoration projects.</p> <p>The requirement of a strategic plan consistent with five plans (section 32376) dramatically weakens the relationship between the conservancy and the Delta plan and ensures great expenditure of energy in sorting out plan inconsistencies.</p> |

². Though separate items on the hearing agenda, these two issues are joined in PSB 4 and in this analysis.