

Comments on Preprint SB 1

Released September 3, 2009

Overview:

This proposed bill creates the Delta Stewardship Council. It incorporates many of the recommendations of the *Delta Vision Strategic Plan*. These comments identify several areas where changes would bring the proposed bill closer to those recommendations.

	Section	Comment	Possible Solution
Preprint Senate Bill 1 (incorporating SB 12, Simitian)			
	85054	<p>The definition of co-equal goals departs from the recommendation of the Delta Vision Strategic Plan, adding values of the Delta as an evolving place as a third goal.</p> <p>Return to the language of the Delta Vision Strategic Plan, consistent with the recommended changes in language in Preprint AB 1/AB 39</p>	<p>“Coequal goals” means the two goals of assuring a reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem.</p> <p>An action critical to achieving the co-equal goals is recognizing and enhancing the unique cultural, recreational, and agricultural values of the California Delta as an evolving place, but it is separate from the co-equal goals.</p>
	85081	<p>Early actions include appointing persons to serve on the Delta Independent Science Board. The nominating bodies named do not include adequate representation of scientists knowledgeable about Delta species or ecosystems.</p>	<p>Revise as follows: The Council shall request a list of nominees to serve on the Delta Independent Science Board, from the Director of the University of California Center for Water Resources and the Director of the United States Geologic Survey office in Sacramento. The council shall establish a transparent process to obtain nominees to serve on the Delta Independent Science Board, which shall include soliciting nominees from the Director of the University of California Center for Water</p>

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			Resources, the Director of the California Sea Grant Program and the Director of the United States Geologic Survey. Such nominees may include members of the CALFED Independent Science Board.
	85084(d)	Council is to direct DFG to submit information and recommendations as to instream flows to the board by April 1, 2010. But appointments to the council do not have to be made until July 1, 2010 (section 85200(b)(1).) It would be better to put this obligation directly on DFG.	(d) 85084.5 Direct the The Department of Fish and Game, consistent with the board's determinations of instream flow needs in the Delta pursuant to Section 85086, shall submit information, etc.
	85200(b)(1)	Revise composition of Council to ensure statewide values, through appointments by the governor with Senate confirmation, as recommended by the Delta Vision Strategic Plan.	The council shall consist of <u>five to seven</u> members, of which four members shall be appointed by the Governor and confirmed by the Senate, one member shall be appointed by the Senate Committee on Rules, one member shall be appointed by the Speaker of the Assembly, and one member shall be the Chairperson of the delta Protection Commission. Initial appointments to the council shall be made by July 1, 2010.
	85200(f)	The council is to meet in public forum. It should be explicit that the council is subject to the requirements of the Bagley-Keene Act, as it is a multi-member state body.	Add: The council shall be subject to the provisions of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) of the Government Code.
	85210(k)	The present language provides that the council may comment on environmental reports for certain projects outside the Delta. It should also be explicit that it can comment on projects within the Delta. Provides for comments on EIRs, but not other environmental documents, such as negative declarations. Why just state agency environmental documents,	To comment on state agency <u>and local</u> environmental impact reports <u>and other</u> environmental documents <u>for projects within the Delta and for projects outside the Delta</u> that the council deter-

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		and not local ones?	mines will have a significant impact on the Delta.
	85210(c)	This section provides that the council may “employ” the services of public, nonprofit, and private entities. But section 85201(g) provides that all persons employed by the council are state employees. Perhaps it would be clearer to provide that the council can contract with such entities, and /or accept services from them.	(b) to enter into contracts, <u>including contracts for services with public, nonprofit, and private entities. Such contracts are exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.</u> (c) to employ <u>accept</u> the services of public, nonprofit, and private entities.
	85217	The last sentence requires rewording to correct an error. The council need not find consistency with the Delta Plan in order to remand it to the commission.	The council shall approve or remand the proposed plan or plan amendments by a majority vote of the council membership only after concluding that the plan is consistent with the Delta Plan.
	85218	This section does not specify what happens if the council has not approved a state agency plan, but has remanded it. Perhaps if the state agency reworks the plan, but it is still deemed by the council to be inconsistent with the Delta Plan, the council shall have the power to revise the agency plan itself, to make it consistent. The Council needs ultimate power, if state agency is recalcitrant.	Revise as follows: <u>A state agency shall adopt its proposed plan or plan amendment within 120 days after their approval by the council. If the council has remanded the plan or plan amendment, the state agency shall revise the plan or amendment within 80 days and resubmit it to the council. The council shall approve the resubmitted plan or amendment only upon concluding that the plan or amendment is consistent with the Delta Plan. If it is not, the council may revise the agency plan or amendment itself, to make it consistent with the Delta Plan.</u>
	85280(a)(1)	This section creates the Delta Independent Science Board. Unless the legislature wants to have two science boards—the CALFED science board and this one, there need to be some provisions for transi-	<u>New: 85280 (e). During a transition period of one year, the Delta Independent Science Board shall assume the</u>

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		tioning from the CALFED board to this one.	<u>work of the CALFED Independent Science Board, which shall then cease to exist. Members of the CALFED ISB may be appointed to the Delta ISB. During the transition period, the members of the two boards shall cooperate so that critical work is not delayed. At the end of the transition period, funding for the CALFED Science Board shall be transferred to the Delta Independent Science Board.</u>
	85280	Is there a reason to exclude <u>retired</u> members of agencies having regulatory authority over the Delta? They might be very knowledgeable. Does the “not limited to” language mean that members may be from groups not listed, e.g. public universities from other states?	
	85280	The CALFED ISB struggled with compliance with Bagley-Keene for its subcommittees. B-K made it difficult for the scientists on a subcommittee to call or e-mail each other to discuss and edit upcoming reports, which is the standard way scientists collaborate on joint work. Suggestion: make meetings of the full Delta ISB subject to Bagley-Keene, but exempt subcommittees, so long as the reports they create are presented and discussed at an open meeting of the full board.	New 85280(e) or (f). <u>The Delta Independent Science Board shall meet in public session in compliance with the Bagley-Keene Open Meetings Act. Subcommittees of the Independent Science Board shall be exempt from the open meeting requirement of Bagley-Keene, so long as significant work products are discussed at an open meeting of the full board, and posted on the board’s web site at least 10 days before adoption by the Board.</u>
	85281(a)(3)	The science board is to review major projects upon the request of certain entities, including “an independent water system operator.” This term is not defined. Does it mean only the operator of SWP/CVP facilities, or any smaller system operator? Given that the ISB will have limited resources, does the Legislature really want it to be required to respond to any request from these entities?	<u>Add: The Delta Independent Science Board may prioritize such requests, and shall expend its resources on the higher priority requests.</u>

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	85405	<p>This section provides for a fee on each water right holder. It includes riparian rights. Since the fee is designed to reach those whose diversions affect the Delta, unexercised riparian rights should be excluded. Riparians who do divert (who should be identified by statements of water diversion and use) would be included, but all land having potential riparian rights would not have to be identified.</p>	<p>Second sentence: The fee shall apply to holders of water rights, including <u>exercised</u> riparian rights, appropriative rights without regard to the date on which those rights were perfected, ...etc.</p>
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