

## Comments on Preprint AB 1 and AB 39 as amended September 1 Released September 4, 2009

### Overview:

Preprint AB 1/AB 39 focuses on the Delta Plan. 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.

AB 39 as amended September 1 includes many changes in language, often simplifications which are not substantive. The amended bill does include several important substantive changes. Importantly for ease in tracking changes, section numbers are unchanged in the amended bill, but deletions or additions of subsections results in changes in identifiers at that level.

These comments identify areas where changes would bring the proposed bills closer to the recommendations of the *Delta Vision Strategic Plan*. All comments apply to sections in both preprint AB 1 and AB 39 as amended September 1.

	Section	Comment	Possible Solution
I. Preprint AB 1 (incorporating AB 39, Huffman)	85054	Track more closely the language of Delta Vision Strategic Plan's Goal 2 in second sentence.	Revise second sentence as follows:  <del>The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, and agricultural values of the Delta as an evolving place. 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.</del>
	85081	Early actions include appointing persons to serve on the Delta Independent Science Board. Will this be a replacement or successor to the CALFED Independent Science Board? The relationship between CALFED and the Delta Council needs to be clarified. The Science Board will be established under section 85280, which is not in this bill, but in preprint SB 1. The nominating bodies named to not include adequate representation of scientists knowledgeable about Delta species or ecosystems.	Revise as follows: <del>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</del>

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			<p><u>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 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."</u></p>
	85300 (c)	<p>Provides that in developing the Delta Plan, the council <b>shall</b> develop the Delta Plan consistent with the provisions of the federal CZMA. It would be good to give the council flexibility in case CZMA proves not to be the best option.</p>	<p>Revise as follows: In developing the Delta Plan the council <del>shall</del> <u>may</u> develop the Delta Plan consistent with the provisions of the federal Coastal Zone Management Act of 1972 or other approach to achieve integration of federal agency actions with the Delta Plan. .. (continue with existing language.)</p>
	85300	<p>Bill requires Delta Plan to be adopted by January 1, 2011, and subsequent regular update and revision. Providing for developing and revision of the Delta Plan, itself integrating many other state developed plans, without separate CEQA process is appropriate to ensure timely completion and revision. The processes detailed for development and revision of the Delta Plan ensure transparency and wide involvement. Projects required to implement the Delta Plan are appropriately subject to CEQA analyses.</p>	<p>Add new section: <u>(f) The California Environmental Quality Act (Division 13, commencing with Section 21000 of the Public Resources Code) does not apply to the preparation and adoption of the Delta Plan and subsequent revisions to the plan. This part does not exempt projects for implementation of CEQA.</u></p>

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	85302	Add <i>Delta Vision Strategic Plan</i> target for habitat restoration.	Add at end of section 85302(a): <u>The Plan shall target 100,000 acres of restored habitat by 2100.</u>
	85305	<p>This section addresses Delta Levees.</p> <p>Section 85305(c) should be amended to incorporate the recommendations of the Delta Vision Strategic Plan as criteria in setting levee investment priorities</p> <p>Action recommendation 5.2.2 should be added.</p> <p>Consider repealing or modifying part of Water Code section 12981, to conform existing law to current understanding of the evolving nature of the Delta. Subsection (c) of section 12981 should be amended to incorporate the recommendations of the Delta Vision Strategic Plan as criteria in setting levee investment priorities.</p>	<p>Add to 85305(c). After the first sentence, add: <u>Levee maintenance must be prioritized on full consideration of any levee's roles in protecting people, land, reliable water supplies, water quality, aquatic ecosystems, infrastructure, the aesthetic and cultural values of the Delta, and the capacity of the Delta to evolve over time. It must consider threats to the levees posed by climate change, seismicity, subsidence, and localized deterioration. It must also consider the potential consequences of levee removal for remaining levees, including increased wind and wave fetch.</u></p> <p><u>Insert a new (d): The department and the Central Valley Flood Board shall create a flood bypass along the lower San Joaquin River no later than January 1, 2011, using existing bond funds to acquire needed easements or title to floodplain and bypass lands. Renumber existing sections.</u></p> <p>Revise Water Code section 12981(b) to read: The Legislature further finds and declares that the delta's uniqueness is par-</p>

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			<p>ticularly characterized by its hundreds of miles of meandering waterways and the many islands adjacent thereto; that, <del>in order to</del> it is important to preserve the delta's invaluable resources, which include highly productive agriculture, recreational assets, fisheries, and wild-life environment. <del>the physical characteristics of the delta should be preserved essentially in their present form;</del> and that <del>the a</del> key to preserving the Delta's <del>physical characteristics-resources</del> is the system of levees defining the waterways and protecting the adjacent islands.</p>
	85306	Bill does not address the format of the Delta Plan	<p>Add: new(a)(6): <u>Regularly include graphics and maps to facilitate public understanding of the plan and its implications. The council shall use all reasonable efforts to post the plan and key background information on its website and update such information on a regular basis using the best available sources of information.</u> Re-number existing (6) as (7).</p>
	85306(5) through (6)	The bill establishes an adaptive management process under council direction for the Delta Plan but does not integrate anticipated adaptive management under BDCP into that process.	<p>Revise (6)(D): "recommended by the council, <del>using</del> <u>integrating</u> the adaptive management program contained in the Bay Delta Conservation Plan <del>and into</del> <u>adaptive management under</u> the Delta Plan.</p>

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	85320	<p>Adds provisions for completion of the Bay Delta Conservation Plan (BDCP), many consistent with recommendations of the <i>Delta Vision Strategic Plan</i>, but includes additional provisions. Successful completion of the Bay Delta Conservation Plan on its projected schedule is important.</p> <p>However, that success will not fully satisfy the recommendations in Goal 5 of the <i>Delta Vision Strategic Plan</i>. This section should be revised to clarify the intent of the Legislature to complete the BDCP and also to provide for the additional actions needed to satisfy Goal 5, especially in regard to expanding options for storage outside of the Delta and for improved operations of water storage and conveyance systems</p>	<p>Add intent in new sentences at end of Section 85320 (a) <u>“It is the intent of the legislature that the Bay Delta Conservation Plan be completed by January 2011. However, completion of BDCP alone will not provide either a reliable water supply or Delta ecosystem restoration. Achieving the coequal goals requires actions not possible under federal or state species protection acts.”</u></p> <p>Insert a new chapter 3 incorporating recommended actions 5.1.2, 5.1.3, 5.2.1, and 5.2.3 from the <i>Delta Vision Strategic Plan</i>.</p> <p>Change the current Chapter 3 to Chapter 4.</p>
	85320(j)	<p>This section does not include the co equal goals in considerations the council is to include in this decision.</p>	<p>Amend the section: “The council shall incorporate the Bay Delta Conservation Plan into the Delta Plan, if it determines in writing, based on best available science, and after holding at least one public hearing, that the Plan will best achieve the two coequal goals and all the following apply: [continue].”</p>
	85320(i)(2)	<p>This section provides for adaptive management under BDCP but does not link that adaptive management to the Delta Plan and the council</p>	<p>Following the text “..meets all of the following requirements:” add a new (A) <u>“Includes procedures for effective integration with and contribution to the Delta Plan.”</u> Renumber the following</p>

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			items, with current "A" becoming "B" etc.
	85321	This section on annual evaluation of the BDCP lacks linkage to the Delta Plan	Modify language as follows: "...with regard to achievement of its objectives and contribution to the Delta Plan."