

**Comments on Preprint SB 1 and SB 12 as amended September 1
Released September 4, 2009**

Overview:

These proposed bills create the Delta Stewardship Council and detail its powers. It incorporates many of the recommendations of the *Delta Vision Strategic Plan*.

SB 12 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*. Comments made on Preprint SB 1 are still important and form the majority of this analysis. Comments specific to SB 12 as amended on September 1, 2009 are identified in column 1.

	Section	Comment	Possible Solution
Preprint Senate Bill 1 (incorporating SB 12, Simitian)			
Amendments of September 1	85034	This new section transfers authorities of the California Bay Delta Authority to the Delta Stewardship Council and maintains existing legal obligations, including contracts and leases. The current CALFED budget structure is linked to federal appropriations which could be inadvertently jeopardized by changes in program structures or nomenclature, which should be avoided.	Add: (e) The Delta Stewardship Council shall manage program structures and budgets to ensure effective continued federal government participation in CALFED programs.
	85054	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. Return to the language of the Delta Vision Strategic Plan, consistent with the recommended changes in language in Preprint AB 1/AB 39	“Coequal goals” means the two goals of assuring a reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. An action critical to achieving the co-equal goals is recognizing and enhancing the unique cultural, recreational, and agricultural values of the California

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			Delta as an evolving place, but it is separate from the co-equal goals.
	85081	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.	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. <u>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 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>
	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 <u>The</u> Department of Fish and Game, consistent with the board's determinations of instream flow needs in the Delta pursuant to Section 85086, <u>shall</u> 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

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			Commission. Initial appointments to the council shall be made by July 1, 2010.
Amendments of September 1	85200(b)(2)	This amendment shortens the term of Council members from eight to four years. Longer fixed terms are used when greater independence is desired. The Governor appoints members to 12 year terms on the UC Board of Regents, for example.	Retain the eight year terms in Preprint SB 1.
	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, and not local ones?	To comment on state agency <u>and local</u> environmental impact reports <u>and other environmental documents for projects within the Delta</u> and for projects outside the Delta that the council determines 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 is 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.
Amendments of September 1	85212	Language in this section has been simplified. Additionally, the capacity of the Council to ensure that state and local agency actions are consistent with an adopted Delta Plan is reduced. For example, reference to remedies is removed at lines 22 and 28. The Council must have tools to en-	Add to (a): The Council shall ensure...are consistent with the Delta Plan, <u>including remedies where the actions of these entities are not consistent with the Del-</u>

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		sure state and local agency actions consistent with the adopted Delta Plan.	<u>ta Plan.</u>
	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 transitioning from the CALFED board to this one.	<u>New: 85280 (e). During a transition period of one year, the Delta Independent Science Board shall assume the 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 trans-</u>

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			<u>ferred to the Delta Independent Science Board.</u>
Amendments of September 1	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?	<u>This issue is resolved in SB 12 amended September 1</u>
Amendments of September 1	85280	Section (a)(1) calls for the lead scientist to nominate members of the Independent Science Board, inconsistent with provisions of section 85081.	Delete “ ..nominated by the lead scientist and.. ”
	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>
Amendments of September 1	85280(b)	This section provides for appointment of a lead scientist and the responsibilities of that person. To ensure the independence of this person, they should be formally employed by an entity other than the State of California under a contract which excludes scientific and policy differences as a cause for termination. This procedure was used for the CALFED lead scientist through contract with the United States Geological Service, an approach that can be followed again.	<u>At Section 95280(b)(2) add: “no more than two terms. The lead scientist should be employed through a contract with an appropriate third party, with contract excluding termination for scientific and policy differences.”</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 re-	<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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		sources, does the Legislature really want it to be required to respond to any request from these entities?	
	85403.5	This section does not specify a time frame for the finance plan, which should match the long term character of programs in the Delta.	Add: The council shall develop a long-term finance plan, <u>encompassing at least twenty five (25 years)</u> , that ensures..."
	85405(a)	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.	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.
	85405(b)	Access to sufficient funds to support work of the council through 2012 is critical and the emergency fee authority will not provide immediate funds and may take time to be effectively implemented. Provision should be made for funding at the time a quorum of the Council is appointed.	Add at end of this subsection: "The Pooled Money Investment Account is authorized to provide funding to the council at its request, with repayment of funds advanced as fee revenues are received."
	85406(b)	This section does not specify who develops budget requests for expenditure of these revenues or how funds will be appropriated. The council should have the authority to initiate budget requests and appropriations should be made to the council.	Add : "Moneys in the fund, <u>upon request by the council and</u> appropriation by the Legislature..."