

## **Memo**

To: Members of the 2009 Water Bills Conference Committee  
From: Phil Isenberg, Chair, Delta Vision Foundation Board  
Date: September 4, 2009  
RE: Financing Delta related bills

### **Coherent, effective and reliable financing is critical to success of the Delta-related bills<sup>1</sup>**

Effective financing must include:

1. Clear policy direction of all Delta relevant state and local expenditures, including bonds, based on an adopted Delta Plan
2. Sufficient reliable funds available to and allocated by the Delta Council to complete its work and implement the Delta Plan
3. Provide funding during the critical start up period through January 1, 2012, including completion of the first Delta Plan no later than January 1, 2011 as specified in AB 39 section 85300, and the first year of Delta Plan implementation
4. Incentives to agencies, water users and others, to support implementation of the Delta Plan

### **Financing provisions in draft bills**

Preprint SB 1 (incorporating SB 12) included many needed elements in sections 85400 through 85407, as reported in the "Summary and Comments" prepared by legislative staff (August 25, 2009):

- a) Delta Plan would be required to apply "beneficiaries pay" principles.
- b) Council would be required to develop and adopt a multi-year estimate covering an unspecified period, in annual increments, of all federal and state funds reasonably expected to be available during that unspecified period to implement the Delta Plan.
- c) Council would be required to develop finance plan that ensures necessary funding to fulfill goals of the Delta Plan and to mitigate the impacts of implementing the Delta Plan.
- d) State Water Project contractors and federal Central Valley Project contractors would be required to pay the entire costs of the following actions and projects:
  - i) Environmental review, planning, design, construction, and operation of any new Delta water conveyance facility
  - ii) Necessary mitigation to reduce environmental damage caused by water export operations and to produce higher quality water for purposes of export
- e) Council would be required to impose an annual fee on each person or entity that holds a right, permit, or license to divert water within the watershed of the San Francisco Bay/Sacramento-San Joaquin Delta. Fee would apply to all holders of water rights.
- f) Until December 31, 2012, the Council would establish fees, by emergency regulation, to provide only for funding necessary to complete the Delta Plan, establish the Council, and implement the early actions.

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1 . References to bills are to the September 1 amended versions, unless otherwise noted. Those bills are available at: <http://www.assembly.ca.gov/acs/newcomframeset.asp?committee=26>

- g) Beginning January 1, 2013, Council would, by regulation, set the fee schedule so that the total revenue collected from fees equals the appropriate proposed annual budget; or, total revenue equals amount needed in the Council's judgment to pay for both:
  - i) Costs of facilities and program activities intended to mitigate damage to fish populations and other natural resources in the Delta and its tributaries reasonably related to the diversion of water and other activities of the holder of water rights.
  - ii) Costs of Council activities financed pursuant to this part, including all costs incurred to establish, administer, defend or collect the authorized fee.
- h) Council would set fee schedule to bear a fair and reasonable relationship to those charges.
- i) Council would review the fees each fiscal year and revise as necessary.
- j) Council would be authorized to issue revenue bonds

SB 12, as amended September 1, 2009, includes none of the financing provisions previously included in preprint SB 1.

The amended SB 12 does include Section 85212(c) providing Council review and approval of relevant budget requests. Similarly, AB 39 includes Section 85305(c) providing Council leadership in establishing priorities for state investments in levees and the implementation of those priorities.

No bond bill is before the Conference Committee. SB 371 (Cogdill) and SB 735 (Steinberg) shared many similarities in purposes and amounts allocated to those purposes, differing primarily in source of funds. SB 371 proposed general obligation funding while SB 735 anticipated a general obligation bond structure but included authorization to impose fees on all water users in the state intended to generate sufficient revenues to finance the debt service.

## Issues to consider

*Short term financing through completion of the first Delta Plan and initial implementation (through December 31 2012).*

Preprint SB 12 authorized fee setting by emergency regulation, a procedure under which funds would not be available for some time.

Legislators may wish to ensure immediate funding for operations of the Council by some combination of:

1. A loan from the Pooled Money Investment Fund against future fee or revenue bond proceeds
2. An emergency appropriation
3. Imposing a prorated fee on those receiving water from the State Water Project<sup>2</sup>
4. Transferring CALFED operations and appropriations to the Council (anticipated in SB 12 Section 85034). As these funds are already appropriated to specific purposes, this does not provide funding for the Delta Council or preparation of the Delta Plan unless funds

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2 . The State Water Project had total revenues of \$989 million in 2008, including \$753 million in water supply revenue.

are redirected to those purposes.

*Long term financing:*

There is broad agreement that fees paid by beneficiaries are the appropriate revenue source for much of the activity required to implement these bills, but there is conflict over which beneficiaries pay for how much and the determination and payment for broader public benefits that cannot be assigned to particular beneficiaries.<sup>3</sup>

The financing provisions in Preprint SB 1 can be modified to achieve most financing recommendations in the *Delta Vision Strategic Plan*, included as attachment 1.

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3 . See the research papers produced for Delta Vision (<http://deltavision.ca.gov/DeltaVisionConsultantReports.shtml>) and the recent PPIC report by Dean Misczynski: [http://www.ppic.org/content/pubs/report/R\\_809DMR.pdf](http://www.ppic.org/content/pubs/report/R_809DMR.pdf)

## Attachment 1: Financing recommendations from the Delta Vision Strategic Plan

### **Action 7.3.1: Enact a series of principles regarding design of financing into legislation authorizing the California Delta Ecosystem and Water Council.**

These principles include:

- a. Employ as wide a range of financing instruments as possible. Multiple revenue streams are always more effective than relying on a single source.
- b. Assess beneficiaries of capital improvements a share of the costs and of the risks and liabilities. The state of California should be responsible for activities of broader benefit.
- c. Ensure consistency and smart prioritization of spending by having revenues allocated by the CDEW Council. Provide effective mechanisms to protect revenues against diversion in tight budget years and also to ensure that all elements of the CDEW Plan advance together.
- d. Create no expectation of public payment for any water required for ecosystem revitalization.
- e. Make access to state funding contingent on a project contractor or a water right holder demonstrating full compliance with all aspects of California resources laws and policies, including complying with the CDEW Plan, possessing a legal right to divert, store, convey, and use water and satisfying all applicable water quality and ecosystem regulations determined to protect the resources and values of the state.
- f. Authorize terminating or reducing funding for any federal, state or local agency that conducts activities inconsistent with the CDEW Plan or the policies of the CDEW Council.

### **Action 7.3.2: Establish a base of revenues outside the state General Fund for the work of the California Delta Ecosystem and Water Council, the Delta Conservancy, the Delta Protection Commission, and related core activities of the Department of Fish and Game, the Department of Water Resources, and the State Water Resources Control Board.**

Those revenue sources should include:

- a. Levy a per-acre-foot fee on water diversions within the Delta watershed, and a separate fee on any water conveyed through or around the Delta. These fees could be specific to activities recommended here or be undertaken on a broader basis to provide core funding for ecosystem and water resource policies statewide. In the latter approach, a sufficiently large fraction of revenues should be dedicated to the activities recommended here.
- b. Protect revenues against diversion to other purposes in tight budget years and ensure that all elements of the CDEW Plan advance together by prohibiting use of funds for any purpose other than activities approved in the CDEW Plan. If no other effective approach is available, include a provision to halt conveyance of water

through the Delta for the State Water Project if revenues earmarked to implementing the CDEW Plan are diverted to another purpose.

- c. Require integrated action consistent with the CDEW Plan in any Delta-related bond or financing instrument. Similar provisions should be included in all contracts.
- d. Require local interests to develop a finance plan to pay for the local share of a capital project. Local cost shares should be linked to the benefits received and the cost of services provided. Require a completed finance plan as a precondition for the design and construction phases of a major capital projects.
- e. Impose the following conditions on any public and private beneficiaries of any CDEW Council financing:
  - i. Affirm that all actions by them support the CDEW Council's adopted CDEW Plan.
  - ii. Ensure full transparency in all fiscal arrangements.
  - iii. Comply with all existing policies and programs.
  - iv. Guarantee consistency through specific bond control language and contract provisions.
  - v. Use life-cycle costing and benefit-cost calculations.
  - vi. Require full allocation of costs and risks, in proportion to benefits received.
  - vii. Allow no subsidized use of California resources.
  - viii. Structure water rates to encourage conservation by greater use of variable rates, tiered rates and connection fees.
  - ix. Develop a comprehensive funding plan for capital projects anticipated over the next 30 years, including operation and maintenance costs and assess the beneficiaries of each project.
  - x. Link any bond and/or appropriation of state funds to ecosystem revitalization success and improved water supply reliability.

### **Action 7.3.3: Find new revenue sources beyond the traditional bond funds or public allocations.**

Some possible sources include generating revenues through conservation, mitigation banking, sequestering carbon and reducing carbon emissions to pay for ecosystem restoration.

#### **a. Mitigation and Conservation Banking**

Mitigation and conservation banking could provide important funds to help ecosystem restoration. A conservation bank generally protects threatened and endangered species habitat. Credits are established for the endangered or threatened species on the site. Conservation banks must be approved by the State and federal wildlife agencies. Mitigation banking is conservation banking except it applies specifically to wetland restoration, creation, and enhancement undertaken to compensate for unavoidable wetland losses.

#### **b. Carbon Offsets**

Established carbon markets are readily available and are increasingly accepted by State and federal authorities. On the Chicago Climate Exchange, contracts representing tonnage of carbon dioxide equivalent are traded. Converting farmed Delta islands with peat soils to natural wetlands could provide two types of offsets. The first comes from a reduction in subsidence. The Delta's peat subsides at a rate of one to three inches a year, mostly in the form of carbon dioxide releases. Another offset would come from the additional carbon dioxide sequestered by cattails or tules. The future carbon price is very uncertain but it appears that carbon dioxide offsets might repay a significant share of Delta island acquisition and wetland restoration costs.

**c. Private and voluntary contributions**

Contributions from landowners can help pay for ecosystem projects. Landowners can sometimes reduce their estate taxes by donations of fee simple or land easements. Financing campaigns can also garner private voluntary contributions for both broad purposes, which also enhance visibility and support such as a "Friends of the Delta" effort or specific projects such as "Help Protect Critical Habitat for Aleutian Canadian Geese").

Possible additional new sources of revenue include charging more for water of higher quality or reliability or assessing the value of levee improvements to navigation and recreation and charging appropriate fees for those uses.