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AMENDMENTS TO ASSEMBLY BILL NO. 39
AS AMENDED IN SENATE JULY 9, 2009

Amendment 1

Strike out lines 1 to 3, inclusive, of the title and insert:

An act to add Division 35 (commencing with Section 85000) to the Water Code, relating to the Sacramento-San Joaquin Delta.

Amendment 2

On page 2, before line 1, insert:

SECTION 1. Division 35 (commencing with Section 85000) is added to the Water Code, to read:

DIVISION 35. SACRAMENTO-SAN JOAQUIN DELTA REFORM ACT OF 2009

PART 1. GENERAL PROVISIONS

CHAPTER 1. SHORT TITLE AND LEGISLATIVE FINDINGS

85000. This division shall be known, and may be cited, as the Sacramento-San Joaquin Delta Reform Act of 2009.

85001. The Legislature finds and declares all of the following:

(a) The Sacramento-San Joaquin Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable. Resolving the crisis requires fundamental reorganization of the state's management of Delta watershed resources.

(b) In response to the Delta crisis, the Legislature and the Governor required development of a new long-term strategic vision for managing the Delta. The Governor appointed a Blue Ribbon Task Force to recommend a new "Delta Vision Strategic Plan" to his cabinet committee, which, in turn, made recommendations for a Delta Vision to the Governor and the Legislature on January 3, 2009.

(c) By enacting this division, it is the intent of the Legislature to facilitate the implementation of a program for the sustainable management of the Sacramento-San Joaquin Delta ecosystem and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan.

85002. The Legislature finds and declares that Sacramento-San Joaquin Delta, referred to as “the Delta” in this division, is a critically important natural resource for California and the nation. It serves Californians concurrently as both the hub of the California water system and the most valuable estuary ecosystem on the west coast of North and South America.

85003. The Legislature finds and declares all of the following:

(a) Originally, the Delta was a shallow wetland with water covering the area for many months of the year. Natural levees, created by deposits of sediment, allowed some islands to emerge during the dry summer months. Salinity would fluctuate, depending on the season and the amount of precipitation in any one year, and the species that comprised the Delta ecosystem had evolved and adapted to this unique, dynamic system.

(b) Delta property ownership developed pursuant to the federal Swamp Land Act of 1850, and state legislation enacted in 1861, and as a result of the construction of levees to keep previously seasonal wetlands dry throughout the year. That property ownership, and the exercise of associated rights, continue to depend on the landowners’ maintenance of those nonproject levees and do not include any right to state funding of levee maintenance or repair.

(c) In 1933, the Legislature approved the California Central Valley Project Act, which relied upon the transfer of Sacramento River water south through the Delta and maintenance of a more constant salinity regime by using upstream reservoir releases of freshwater to create a hydraulic salinity barrier. As a result of the operations of state and federal water projects, the natural salinity variations in the Delta have been altered.

Restoring a healthy estuarine ecosystem in the Delta may require developing a more natural salinity regime in parts of the Delta.

CHAPTER 2. DELTA POLICY

85020. (a) The coequal goals shall be the standard for long-term management of Delta water and environmental resources.

(b) The policy of the State of California is to achieve the following objectives that the Legislature declares are inherent in the coequal goals for management of the Delta:

(1) Manage the Delta's water and environmental resources and the water resources of the state over the long-term.

(2) Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place.

(3) Restore the Delta ecosystem, including its fisheries, as the heart of a healthy estuary.

(4) Promote statewide water conservation, efficiency, and sustainable use.

(5) Achieve water quality objectives in the Delta.

(6) Improve the existing water conveyance system and expand statewide water storage.

(7) Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection.

(8) Establish a new governance structure with the authority, responsibility, accountability, scientific support, and adequate and secure funding to achieve these objectives.

85021. The policy of the State of California is to reduce dependence on water from the Delta watershed, over the long-term, for statewide water supply reliability. Each region that depends on water from the Delta shall improve its regional self-reliance for water through investment in water-use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.

85022. (a) It is the intent of the Legislature that state and local land use actions are consistent with the Delta Plan, including the commission's resources management plan. This section's findings, policies, and goals apply to Delta land-use planning and development.

(b) The actions of the council shall be guided by the findings, policies, and goals expressed in this section when reviewing decisions of the commission pursuant to Division 19.5 (commencing with Section 29700) of the Public Resources Code.

(c) The Legislature finds and declares as follows:

(1) The Delta is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced estuary ecosystem of hemispheric importance.

(2) The permanent protection of the Delta's natural and scenic resources is the paramount concern to present and future residents of the state and nation.

(3) To promote the public safety, health, and welfare, and to protect public and private property, wildlife, fisheries, and the natural environment, it is necessary to protect the ecosystem of the Delta and prevent its deterioration and destruction.

(4) Existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to persons living and working in the Delta.

(d) The fundamental goals for managing land use in the Delta are to:

(1) Protect, maintain, enhance, and, where feasible, restore the overall quality of the Delta environment and its natural and artificial resources.

(2) Ensure the utilization and conservation of Delta resources taking into account the social and economic needs of the people of the state.

(3) Maximize public access to Delta resources and maximize public recreational opportunities in the Delta consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

(4) Ensure priority for Delta-dependent and Delta-related development over other development in the Delta.

(5) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the Delta.

85023. The longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta.

CHAPTER 3. MISCELLANEOUS PROVISIONS

85031. This division does not diminish, impair, or otherwise affect any area of origin, watershed of origin, county of origin, or any other water rights protections provided under the law. This division does not limit or otherwise affect the application of Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections 12200 to 12220, inclusive.

85032. This division does not affect any of the following:

(a) The Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code).

(b) The California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(c) The Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000)).

(d) The application of the public trust doctrine.

(e) Any water right.

(f) The liability of the state for flood protection in the Delta or its watershed.

85034. (a) (1) The Delta Stewardship Council shall administer all contracts, grants, easements, and agreements made or entered into by the California Bay-Delta Authority under Division 26.4 (commencing with Section 79400), as that division read on December 31, 2009.

(2) The exercise of the authority described in paragraph (1) is not subject to review or approval by the Department of General Services.

(3) A contract, lease, license, or any other agreement to which the California Bay-Delta Authority is a party is not void or voidable as a result of the implementation of this subdivision, but shall continue in full force and effect until the end of its term.

(b) The Delta Stewardship Council shall be the successor to and shall assume from the California Bay-Delta Authority all of the administrative rights, abilities, obligations, and duties of that authority.

(c) The Delta Stewardship Council shall have possession and control of all records, papers, equipment, supplies, contracts, leases, agreements, and other property, real or personal, connected with the administration of Division 26.4 (commencing with Section 79400), as that division read on December 31, 2009, or held for the benefit or use of the California Bay-Delta Authority.

(d) The Delta Stewardship Council shall assume from the California Bay-Delta Authority all responsibility to manage the science program element that was required to be undertaken by Division 26.4 (commencing with Section 79400), as that division read on December 31, 2009.

CHAPTER 4. DEFINITIONS

85050. Unless the context otherwise requires, the definitions set forth in this chapter govern the construction of this division.

85051. "Acquisition" means the acquisition of a fee interest or any other interest, including easements, leases, and development rights.

85053. “Bay Delta Conservation Plan” means a natural community conservation plan that complies with the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), and complies with Section 10 of the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.) and accompanying regulations.

85054. “Coequal goals” means the two goals of assuring a reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. 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.

85055. “Commission” means the Delta Protection Commission established in Division 19.5 (commencing with Section 29700) of the Public Resources Code.

85056. “Conservancy” means the Sacramento-San Joaquin Delta Conservancy established in Section 32320 of the Public Resources Code.

85057. “Council” means the Delta Stewardship Council established in Section 85200.

85058. “Delta” means the Sacramento-San Joaquin Delta as defined in Section 12220, the Suisun Marsh as defined in Section 29101 of the Public Resources Code, and the Yolo Bypass.

85059. “Delta Plan” means the comprehensive, long-term management plan for the Delta to achieve the coequal goals as adopted by the council in accordance with this division.

85060. "Delta watershed" means the Sacramento River Hydrologic Region and the San Joaquin River Hydrologic Region as described in the department's Bulletin No. 160-05.

85063. "Private water agency" means a public utility as defined in Section 216 of the Public Utilities Code that provides water service as defined in Section 515 or a mutual water company as defined in Section 2725 of the Public Utilities Code.

85064. "Public water agency" means a public entity, as defined in Section 514, that provides water service, as defined in Section 515.

85066. "Restoration" means the application of ecological principles to restore a degraded or fragmented ecosystem and return it to a condition in which its biological and structural components achieve a close approximation of its natural potential.

85067. "Strategic Plan" means both the "Delta Vision Strategic Plan" issued by the Delta Vision Blue Ribbon Task Force on October 17, 2008, and the "Delta Vision Implementation Report" adopted by the Delta Vision Committee and dated December 31, 2008. Where the two documents conflict, the "Delta Vision Strategic Plan" issued by the Delta Vision Blue Ribbon Task Force shall prevail.

PART 2. EARLY ACTIONS

85080. Upon appointment of a quorum of the council, the council shall assume responsibility for overseeing implementation of early actions, as provided in this part. The council may identify early actions in addition to those identified in this part

pertaining to transportation, utilities, recreation, water supply, ecosystem improvements, and flood control.

85081. (a) Within 60 days of the appointment of a quorum of the council, 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 Geological Survey office in Sacramento.

(b) The council shall appoint persons to serve on the Delta Independent Science Board, in accordance with Section 85280, within 30 days of receiving the list of nominees.

85082. Within 120 days of the appointment of a quorum of the council, the council shall develop and implement a strategy to appropriately engage participation of the federal agencies with responsibilities in the Delta. This strategy may include developing the Delta Plan consistent with the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and Section 8 of the federal Reclamation Act of 1902.

85083. Within 120 days of the appointment of a quorum of the council, the council shall begin developing information necessary to develop the Delta Plan in accordance with this division, including, but not limited to, all of the following:

(a) A list of all applicable legal requirements, including requirements relating to federal and state endangered species laws that pertain to the Delta.

(b) Determination of the relevance of other federal, state, and local plans to the development of the Delta Plan.

85084. The council shall develop an interim plan that includes recommendations for early actions, projects, and programs, including, but not limited to, the following:

(a) Develop and implement an interim finance strategy for developing the Delta Plan and taking the early actions described in this part.

(b) Commence study of the transfer of the State Water Project to a separate public agency or utility.

(c) Designate the department and the Department of Fish and Game to implement near-term restoration projects, including, but not limited to, Dutch Slough tidal marsh restoration, Meins Island tidal marsh restoration, and floodplain and floodway improvements in the Yolo Bypass.

(d) Direct the Department of Fish and Game, consistent with the board's determinations of instream flow needs in the Delta pursuant to Section 85086, to submit information and any recommendations as to the Delta's instream flow needs to the board by April 1, 2010. The information shall include only information in its possession that the Department of Fish and Game deems reliable.

85085. The department shall do all of the following:

(a) Conduct a study of the Middle River Corridor Two-Barrier pilot project.

(b) Evaluate the effectiveness of the Three Mile Slough Barrier project.

(c) Construct demonstration fish protection screens at Clifton Court Forebay.

(d) Assist the Department of Fish and Game in implementing early action ecosystem restoration projects, including, but not limited to, Dutch Slough tidal marsh restoration, Meins Island tidal marsh restoration, and floodplain and floodway improvements in the Yolo Bypass.

85086. (a) The board shall establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010.

(b) It is the intent of the Legislature to establish an accelerated process to determine instream flow needs of the Delta and its tributaries on a preliminary basis for the purposes of facilitating the planning decisions that are required to achieve the objectives of the Delta Plan.

(c) (1) The board, in consultation with the Department of Fish and Game and by June 30, 2010, shall complete an analysis of the best available scientific information in existence as of the date of enactment of this division and determine the instream flow needs in the Delta, from the Sacramento River watershed, for ecosystem and water quality purposes. The Department of Fish and Game may submit to the board information generated in the Bay Delta Conservation Plan development process or other appropriate sources.

(2) The board may not grant any petition to change the point of diversion in the Delta for the State Water Project or the federal Central Valley Project from the current points of diversion in the south Delta to a location in the Sacramento River watershed before the board makes its determination pursuant to paragraph (1) and complies with all other existing statutory requirements for changing a point of diversion.

(d) (1) The board shall charge the department for the costs of this analysis and determination pursuant to the board's authority to regulate the water rights of the State Water Project and the federal Central Valley Project.

(2) The department shall obtain reimbursement for those charges from the State Water Project contractors, pursuant to the existing State Water Project contracts, and

may use funding made available pursuant to the Financial Assistance Agreement for the Delta Habitat Conservation and Conveyance Program, as executed by the United States Bureau of Reclamation on March 13, 2009.

(e) The board shall submit its instream flow need determinations pursuant to this section to the council within 30 days of final adoption.

(f) The preliminary instream flow need determinations required by this section shall not be subject to judicial review.

85087. The board, by December 31, 2010, shall submit a prioritized schedule to complete determinations as to instream flow needs for the Delta and for high priority rivers and streams in the Delta watershed, not otherwise described in Section 85086, by 2012, and for all major rivers and streams outside the Delta watershed by 2018. In developing this schedule, the board shall consult with the Department of Fish and Game as to the timing of its submission of recommendations for instream flow needs.

PART 4. COMPREHENSIVE DELTA PLANNING

CHAPTER 1. THE DELTA PLAN

85300. (a) The council, by no later than January 1, 2011, shall develop, adopt, and implement a comprehensive Delta Plan pursuant to this part that is consistent with the coequal goals. The Delta Plan shall identify specific actions by state agencies, which shall be required to implement those identified actions. Unless otherwise specified, the Delta Plan shall incorporate the strategies described in the Strategic Plan

and the council shall consider the actions in the Strategic Plan in the development of the Delta Plan.

(b) In developing the Delta Plan, the council shall consult with federal, state, and local agencies with responsibilities in the Delta. The council may appoint specific state agencies to contribute to developing portions of the Delta Plan, and may incorporate any state agency proposals into the Delta Plan, as the council deems appropriate. All state agencies with responsibilities in the Delta shall cooperate with the council in developing the Delta Plan, if the council so requests.

(c) In developing the Delta Plan, the council shall develop the Delta Plan consistent with the provisions of the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), Section 8 of the federal Reclamation Act of 1902, and the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.). If the council adopts a Delta Plan consistent with the federal Coastal Zone Management Act of 1972, it shall submit the Delta Plan for approval to the United States Secretary of Commerce pursuant to that act, or to any other federal official assigned responsibility for the Delta pursuant to a federal statute enacted after January 1, 2010.

(d) The council may review and revise the Delta Plan at times that it deems appropriate and shall complete a review and make any necessary revisions to the Delta Plan by January 1 of each year ending in 1 or 6. The council may request any state agency with responsibilities in the Delta to contribute to the revisions to any part of the Delta Plan.

(e) The council shall report to the Legislature no later than March 31, 2012, as to its adoption of the Delta Plan.

85301. (a) The commission shall develop, for consideration and incorporation into the Delta Plan by the council, a proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place. For the purpose of carrying out this subdivision, the commission shall incorporate into the proposal the relevant strategies described in, and consider the actions recommended by, the Strategic Plan.

(b) (1) The commission shall include in the proposal a plan to establish state and federal designation of the Delta as a place of special significance, which may include application for a federal designation of the Delta as a National Heritage Area.

(2) The commission shall include in the proposal a regional economic plan, for submission to the council, to support increased investment in agriculture, recreation, tourism, and other resilient land uses in the Delta. The regional economic plan shall include detailed recommendations for the administration of the Delta Investment Fund created in Section 29778.5 of the Public Resources Code.

(c) For the purposes of assisting the commission in its preparation of the proposal, both of the following actions shall be undertaken:

(1) The Department of Parks and Recreation shall prepare a proposal, for submission to the commission, to expand within the Delta the network of state recreation areas, combining existing and newly designated areas. The proposal may incorporate appropriate aspects of any existing plans, including the Central Valley Vision Implementation Plan adopted by the Department of Parks and Recreation.

(2) The Department of Food and Agriculture shall prepare a proposal, for submission to the commission, to establish market incentives and infrastructure to protect and enhance the economic and public values of Delta agriculture.

(d) The commission shall submit the proposal developed pursuant to subdivision (a) to the council, and the council may approve and incorporate the proposal into the Delta Plan.

85302. (a) The Delta Plan, upon implementation, shall achieve the restoration of the Delta ecosystem. The Delta Plan shall require actions on the part of the state, local agencies, and special districts in addition to their mitigation duties for projects in the Delta that are intended to achieve the restoration goal.

(b) The geographic scope of the ecosystem restoration projects and programs identified in the Delta Plan shall extend to the first dams on the tributaries of the Delta. The council may include an ecosystem project above those dams, if it determines that the project would contribute significantly to the restoration of the Delta estuary ecosystem.

(c) The Delta Plan shall promote the following characteristics of a healthy Delta ecosystem:

- (1) Viable populations of native resident and migratory species.
- (2) Functional corridors for migratory species.
- (3) Diverse and biologically appropriate habitats and ecosystem processes.
- (4) Waterflows to support habitats and processes.
- (5) Significantly reduced threats and stresses on the environment.

(6) Conditions conducive to meeting or exceeding the goals in existing species recovery plans and the state and federal salmon doubling goal.

(d) (1) The Delta Plan shall include the following strategies for restoring a healthy ecosystem.

(A) Restore large areas of interconnected habitats within the Delta and its watershed by 2100.

(B) Establish migratory corridors for fish, birds, and other animals along selected Delta river channels.

(C) Promote viable, diverse populations of native and valued species by reducing the risk of fish kills and the harm from invasive species.

(D) Restore Delta flows and channels to support a healthy estuary and other ecosystems.

(E) Improve water quality to meet drinking water, agriculture, and ecosystem long-term goals.

(2) The council shall consider the incorporation into the Delta Plan of actions designed to implement the strategies described in paragraph (1), as described in the Strategic Plan.

(e) In carrying out this section, the council shall make use of the best available science.

(f) The council shall review, in consultation with the commission, and report to the Legislature, by December 31, 2011, regarding state agency management of lands in the Delta, including any recommendations to improve land acquisition and management activities of the conservancy.

85303. The Delta Plan shall promote statewide water conservation, efficiency, and sustainable use, through incorporation of relevant strategies and consistent with relevant actions described in the Strategic Plan.

85304. (a) The Delta Plan shall address the Delta's needs for expanding options for water conveyance, water storage, and improved reservoir operations.

(b) The department, in consultation with the United States Army Corps of Engineers and the Central Valley Flood Protection Board, shall prepare a proposal to integrate flood and water supply operations of the State Water Project and the federal Central Valley Project, and submit the proposal to the council for consideration for incorporation into the Delta Plan. In drafting the proposal, the department shall consider all related actions set forth in the Strategic Plan.

85305. (a) The Delta Plan shall attempt to reduce risks to people, property, and state interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and investments in flood protection.

(b) The council shall incorporate into the Delta Plan the work of the California Emergency Management Agency with regard to its preparation of a proposed emergency preparedness and response strategy for the Delta pursuant to Section 12994.5.

(c) The council, in consultation with the Central Valley Flood Protection Board, shall establish priorities in the Delta Plan for state investments in levee operation, maintenance, and improvements in the Delta, including both levees that are a part of the State Plan of Flood Control and nonproject levees. The priorities shall govern the expenditure of state funds for Delta projects or programs authorized pursuant to Chapter 2 (commencing with Section 12310) of Part 4.8 of, and Part 9 (commencing with

Section 12980) of, Division 6. The council shall oversee the implementation of the priorities established pursuant to this subdivision.

(d) The Delta Plan may identify actions to be taken outside the Delta, where those actions are determined to significantly reduce flood risks in the Delta.

(e) The council may consider local plans of flood protection for incorporation into the Delta Plan.

(f) The council, in consultation with the Department of Transportation, shall address in the Delta Plan the effects of climate change and sea level rise on the three state highways that cross the Delta.

(g) The council, in consultation with the State Energy Resources Conservation and Development Commission and the Public Utilities Commission, shall incorporate into the Delta Plan additional actions to address the needs of Delta energy development, energy storage, and energy distribution.

85306. (a) The Delta Plan shall meet all of the following requirements:

(1) Be based on the best available scientific information and the independent science advice provided by the Delta Independent Science Board.

(2) Include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan.

(3) Provide for monitoring, data collection, and analysis of actions sufficient to determine progress toward meeting the quantified targets.

(4) Integrate scientific and monitoring results into ongoing Delta water management.

(5) Include a science-based, transparent, and formal adaptive management strategy for ongoing ecosystem restoration and water management decisions.

(6) The adaptive management strategy shall accomplish all of the following:

(A) Reflect and synthesize existing knowledge about the Delta as a physical system.

(B) Describe the expectations or hypotheses about the effects of management actions included in the Delta Plan on the ecosystem, water supply, and other values.

(C) Recommend additional management actions expected to contribute to ecosystem or water supply and reliability improvements or are designed to contribute to a greater understanding of the Delta and its ecosystem.

(D) Identify and establish, under the review of the Delta Independent Science Board, the processes by which the data will be synthesized, hypotheses evaluated, and new management actions that are recommended by the council, using the adaptive management program contained in the Bay Delta Conservation Plan and the Delta Plan.

(b) The council shall develop a procedure and process for revising the ecosystem restoration and water management actions in the Delta Plan as necessary to meet the requirements of subdivision (a).

CHAPTER 2. BAY DELTA CONSERVATION PLAN

85320. (a) The Legislature finds and declares that federal, state, and local agencies, as well as special districts and interested stakeholders, have initiated

development of the Bay Delta Conservation Plan, which will make recommendations for habitat management, water supply reliability, and important regional conservation objectives. The Natural Resources Agency has provided the leadership for this initiative.

(b) The department shall propose, in conjunction with other federal, state, and local agencies, a Bay Delta Conservation Plan that complies with the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), as certified by the Department of Fish and Game pursuant to that act.

(c) It is the intent of the Legislature that the Bay Delta Conservation Plan, with the agreement and participation of appropriate federal agencies, shall also be developed as a habitat conservation plan for the purposes of Section 10 of the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).

(d) To the maximum extent practicable, the department shall consult with the council during the development of the Bay Delta Conservation Plan.

(e) If the Bay Delta Conservation Plan complies with the Natural Community Conservation Planning Act, the Department of Fish and Game shall approve the Bay Delta Conservation Plan pursuant to the Natural Community Conservation Planning Act.

(f) The department shall prepare an environmental impact report for the Bay Delta Conservation Plan pursuant to the California Environmental Quality Act. The council shall review and comment to the department on the draft environmental impact report. The department shall consider incorporating the council's comments into a final

environmental impact report. The department shall also document the reasons for its decisions with respect to each comment of the council.

(g) The draft environmental impact report shall be submitted to the Delta Independent Science Board for its review, and, prior to certification, its findings shall be submitted to the council within 60 days of receipt.

(h) The council shall review and comment on the findings of the Delta Independent Science Board in a public hearing prior to reviewing the Bay Delta Conservation Plan.

(i) 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 all following apply:

(1) The Bay Delta Conservation Plan and the final environmental impact report are based on the best available scientific information, and contain a comprehensive investigation and analysis of all of the following:

(A) The volume, quality, and timing of water required for a healthy Delta estuarine ecosystem under different conditions, including seasonal, annual, and interannual bases, and including an assessment of increased spring and fall outflow and increased San Joaquin River inflow.

(B) A full range of Delta conveyance alternatives, including through-Delta, dual conveyance, and isolated conveyance alternatives. This analysis shall be in consultation with the Department of Fish and Game, and shall fully consider the impact these options have on in-Delta, Sacramento River, and estuarine ecological processes and functions,

including the assessment of increased spring and fall outflow, and increased San Joaquin River inflow.

(C) The alternatives described in subparagraph (B) that also considers capacity and design options of a lined canal, an unlined canal, and pipelines.

(D) The potential effects of climate change, possible sea level rise of at least 55 inches, and possible changes in total precipitation and runoff patterns on the conveyance alternatives and habitat restoration activities considered in the environmental impact report.

(E) Potential impacts on migratory fish and aquatic resources, at both the population and ecosystem levels, upstream of the Delta. The Bay Delta Conservation Plan shall design monitoring programs to systematically gather needed data.

(F) Potential impacts resulting from implementation of the Bay Delta Conservation Plan on Sacramento River and San Joaquin River flood management.

(G) The alternatives described in subparagraph (B) for resilience and recovery in the event of catastrophic loss caused by earthquake or flood or other natural disaster. This evaluation shall include an analysis of the conveyance options based on a common level of seismic and flood durability.

(H) The probability of achieving current Delta water quality for each of the conveyance alternatives.

(2) The Bay Delta Conservation Plan includes a science-based and formal adaptive management program developed in compliance with the adaptive management requirements of the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code) and the

Delta Plan that is reviewed by the Delta Independent Science Board and that integrates scientific and monitoring results into ongoing Delta water management. The adaptive management strategy that is contained in the Bay Delta Conservation Plan or the final environmental impact report meets all of the following requirements:

(A) Reflects and synthesizes existing knowledge about the Delta as a physical system.

(B) Describes expectations or hypotheses about the effects of management actions included in the Delta Plan on the ecosystem, water supply, and other values.

(C) Recommends additional management actions expected to contribute to ecosystem or water supply and reliability improvements or are designed to contribute to greater understanding of the Delta and its ecosystem.

(D) Identifies and establishes, with review of the Delta Independent Science Board, the processes by which the data will be synthesized, hypotheses evaluated, and new management actions that are recommended by the council, using the adaptive management program contained in the Bay Delta Conservation Plan and the Delta Plan.

85321. The council and the Delta Independent Science Board shall evaluate annually the Bay Delta Conservation Plan, if it is adopted, with regard to the achievement of its objectives. The council shall submit each evaluation to the Legislature and the Bay Delta Conservation Plan permitting agencies.

85322. Nothing in this chapter amends or otherwise affects the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code).

CHAPTER 3. OTHER PLANS FOR THE DELTA

85350. The council may incorporate other completed plans related to the Delta into the Delta Plan to the extent that the other plans promote the coequal goals.

SEC. 2. This act shall only become operative if AB 49, SB 12, SB 229, and SB 458 of the 2009–10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.

Amendment 3

On page 2, strike out lines 1 and 2