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AMENDMENTS TO SENATE BILL NO. 12  
AS AMENDED IN ASSEMBLY JULY 9, 2009

Amendment 1

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

An act to amend Sections 6103.1 and 6103.4 of the Government Code, and to amend Section 1120 of, to add Division 35 (commencing with Section 85000) to, to add Chapter 2 (commencing with Section 85320) to Part 4 of Division 35 of, and to repeal Division 26.4 (commencing with Section 79400) of, the Water Code, relating to resources.

Amendment 2

On page 2, before line 1, insert:

SECTION 1. Section 6103.1 of the Government Code is amended to read:

6103.1. Section 6103 does not apply to any fee or charge for official services required by ~~Parts~~ Part 1 (commencing with Section 1000), Part 2 (commencing with Section 1200), Part 3 (commencing with Section 2000), and Part 4 (commencing with Section 4000), Part 5 (commencing with Section 4999), or Part 5.1 (commencing with Section 5100) of Division 2, Division 7 (commencing with Section 13000), or Division 35 (commencing with Section 85000) of the Water Code.

SEC. 2. Section 6103.4 of the Government Code is amended to read:

6103.4. Section 6103 does not apply to any fee or charge for official services required by Section 100860 of the Health and Safety Code, ~~or Part 5 (commencing with Section 4999) of Division 2, or Division 7 (commencing with Section 13000), of the Water Code.~~

SEC. 3. Section 1120 of the Water Code is amended to read:

1120. This chapter applies to any decision or order issued under this part or Section 275, Part 2 (commencing with Section 1200), Part 2 (commencing with Section 10500) of Division 6, Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, Section 85230, or the public trust doctrine.

SEC. 4. Division 26.4 (commencing with Section 79400) of the Water Code is repealed.

SEC. 5. 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 the 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 and wetland 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. 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:

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

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

(c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.

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

(e) Achieve water quality objectives in the Delta.

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

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

(h) 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 reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water-use efficiency. Each region that depends on water from the Delta watershed 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 be consistent with the Delta 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 all of the following:

(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 and wetland 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 and enhance the ecosystem of the Delta and prevent its further 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 do all of the following:

(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) 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.

(5) Develop new or improved aquatic and terrestrial habitat and protect existing habitats to advance the goal of restoring and enhancing the Delta ecosystem.

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 Fish and Game Code.
- (d) The Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000)).
- (e) The application of the public trust doctrine.
- (f) Any water right.
- (g) The liability of the state for flood protection in the Delta or its watershed.



85034. (a) (1) The 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 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 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 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.

85052. “Adaptive management” means a framework and flexible decisionmaking process for ongoing knowledge acquisition, monitoring, and evaluation leading to continuous improvement in management planning and implementation of a project to achieve specified objectives.

85053. “Bay Delta Conservation Plan” or “BDCP” 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 providing a more 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, natural resource, 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.

85057.5. (a) "Covered action" means a plan, program, project, or activity that, in whole or in part:

- (1) Will occur within the boundaries of the Delta or Suisun Marsh.
- (2) Will be carried out, approved, or funded by the state or a local public agency.
- (3) Is covered by one or more provisions of the Delta Plan.
- (4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.

(b) "Covered action" does not include a regulatory action of a state agency.

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 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.

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, taking into consideration the physical changes that have occurred in the past and the future impact of climate change and sea level rise.

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.

## PART 2. EARLY ACTIONS

85080. The council shall appoint a Delta Independent Science Board, in accordance with Section 85280.

85082. The council shall develop and implement a strategy to appropriately engage participation of the federal agencies with responsibilities in the Delta. This strategy shall include engaging these federal agencies to develop 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.

85084. The council shall develop an interim plan that includes recommendations for early actions, projects, and programs.

85084.5. The Department of Fish and Game, in consultation with the United States Fish and Wildlife Service and the National Marine Fisheries Service and based on the best available science, shall develop and recommend to the board Delta flow criteria and quantifiable biological objectives for aquatic and terrestrial species of concern dependent on the Delta. The recommendations shall be developed no later than 12 months after the date of enactment of this division.

85085. The department shall do all of the following:

(a) Assist the United States Bureau of Reclamation in implementation of 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 for the purposes of facilitating the planning decisions that are required to achieve the objectives of the Delta Plan.

(c) (1) Pursuant to its public trust obligations, the board shall develop new flow criteria for the Delta ecosystem necessary to protect public trust resources. In carrying out this section, the board shall review existing water quality objectives and use the

best available scientific information. The flow criteria for the Delta ecosystem shall include the volume, quality, and timing of water necessary for the Delta ecosystem under different conditions. The flow criteria shall be developed in a public process by the board within nine months of the enactment of this division. The flow criteria shall not be considered predecisional with regard to any subsequent board consideration of a permit, including any permit in connection with a final BDCP.

(2) Any order approving a change in point of diversion of the State Water Project and the federal Central Valley Project from the southern Delta to a point on the Sacramento River shall include appropriate Delta flow criteria and shall be informed by the analysis conducted pursuant to this section. The flow criteria shall be subject to modification over time based on a science-based adaptive management program that integrates scientific and monitoring results, including the contribution of habitat and other conservation measures, into ongoing Delta water management.

(3) Nothing in this section limits the board's authority in any proceeding to review the water rights of a person who diverts water in the Delta watershed, or to incorporate terms and conditions in that persons' water rights to contribute to the implementation of the flow criteria.

(4) Nothing in this section amends or otherwise affects the application of the board's authority under Part 2 (commencing with Section 1200) of Division 2 to include terms and conditions on permits that in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated.

(d) The board shall enter into an agreement with the State Water Project contractors and the federal Central Valley Project contractors, who rely on water

exported from the Sacramento River watershed, or a joint powers authority comprised of those contractors, for reimbursement of the costs of the analysis conducted pursuant to this section.

(e) The board shall submit its flow criteria determinations pursuant to this section to the council for its information within 30 days of completing the determinations.

85087. The board, by December 31, 2010, shall submit to the Legislature a prioritized schedule and estimate of costs to complete instream flow studies for the Delta and for high priority rivers and streams in the Delta watershed, not otherwise covered by Section 85086, by 2012, and for all major rivers and streams outside the Sacramento River 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.

85088. Until the board issues an order approving a change in the point of diversion of the State Water Project and the federal Central Valley Project from the southern Delta to a point on the Sacramento River as specified in subdivision (c) of Section 85086, the department shall not commence construction of any diversion, conveyance, or other facility necessary to divert and convey water pursuant to the change in point of diversion.

## PART 3. DELTA GOVERNANCE

## CHAPTER 1. DELTA STEWARDSHIP COUNCIL

85200. (a) The Delta Stewardship Council is hereby established as an independent agency of the state.

(b) (1) The council shall consist of seven 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.

(2) The initial term of office of each member of the council shall be one, two, three, or four years, as specified in subdivision (c), and all subsequent terms shall be four years.

(3) No member of the council shall serve two consecutive terms, but a member may be reappointed after a period of two years following the end of his or her term, except that those members of the council that serve an initial term of one or two years may be immediately appointed to a subsequent full four-year term.

(c) The Governor, upon his or her appointment of members pursuant to subdivision (b), shall designate the appointees as serving initial terms of either one or two years. One class shall have three members and the other two classes shall have two members each. For the class that has three members, the terms of office shall be



one year. The second class, composed of two members, shall serve two years. The third class, composed of two members, one each appointed by the Senate Committee on Rules and the Speaker of the Assembly, by July 1, 2010, shall serve four years. Thereafter, the terms of all succeeding members shall be four years.

(d) Any vacancy shall be filled by the appointing authority within 60 days. If the term of a council member expires, and no successor is appointed within the allotted timeframe, the existing member may serve up to 180 days beyond the expiration of his or her term.

(e) The council members shall select a chairperson from among its members, who shall serve for not more than four years in that capacity.

(f) The council shall meet once a month in a public forum. At least two meetings each year shall take place at a location within the Delta.

85201. The chairperson shall serve full time. Other members shall serve one-third time. The council may select a vice chairperson and other officers determined to be necessary.

(a) Each member of the council shall receive the salary provided for in Section 11564 of the Government Code.

(b) The members of the council shall be reimbursed for expenses necessarily incurred in the performance of official duties.

(c) The council shall appoint an executive officer who shall serve full time at the pleasure of the council.

(d) The executive officer shall hire employees necessary to carry out council functions.

(e) The number of employees and qualifications of those employees shall be determined by the council, subject to the availability of funds.

(f) The salary of each employee of the council shall be determined by the State Personnel Board, and shall reflect the duties and responsibilities of the position.

(g) All persons employed by the council are state employees, subject to the duties, responsibilities, limitations, and benefits of the state.

85202. Council members shall possess diverse expertise and reflect a statewide perspective.

85203. The headquarters of the council shall be located in Sacramento.

85204. The council shall establish and oversee a committee of agencies responsible for implementing the Delta Plan. Each agency shall coordinate its actions pursuant to the Delta Plan with the council and the other relevant agencies.

## CHAPTER 2. MISSION, DUTIES, AND RESPONSIBILITIES OF THE COUNCIL

85210. The council has all of the following powers:

(a) To sue or be sued.

(b) To enter into contracts.

(c) To employ the services of public, nonprofit, and private entities.

(d) To delegate administrative functions to council staff.

(e) To employ its own legal staff or contract with other state or federal agencies for legal services, or both. The council may employ special legal counsel with the approval of the Attorney General.

(f) To receive funds, including funds from private and local governmental sources, contributions from public and private sources, as well as state and federal appropriations.

(g) To disburse funds through grants, public assistance, loans, and contracts.

(h) To request reports from state, federal, and local governmental agencies on issues related to the implementation of the Delta Plan.

(i) To adopt regulations as required for the implementation of this division.

(j) To comment on state agency environmental impact reports for projects outside the Delta that the council determines will have a significant impact on the Delta.

(k) To hold hearings in all parts of the state necessary to carry out the powers vested in it, and for those purposes has the powers conferred upon the heads of state departments pursuant to Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code. Any hearing by the council may be conducted by any member of the council, or other designee, upon authorization of the council, and he or she shall have the powers granted to the council by this section, provided that any final action of the council shall be taken by a majority of the members of the council at a meeting duly called and held.

85211. The Delta Plan shall include performance measurements that will enable the council to track progress in meeting the objectives of the Delta Plan. The performance measurements shall include, but need not be limited to, quantitative or otherwise measurable assessments of the status and trends in all of the following:

(a) The health of the Delta's estuary and wetland ecosystem for supporting viable populations of aquatic and terrestrial species, habitats, and processes, including viable populations of Delta fisheries and other aquatic organisms.

(b) The reliability of California water supply imported from the Sacramento River or the San Joaquin River watershed.

85212. (a) The council shall adopt a consultation process for the purposes of this division with all state agencies, departments, boards, and commissions that have specified responsibilities to develop, implement, monitor, and adhere to all or part of the Delta Plan. The council shall ensure, to the maximum extent practicable, that the actions of these entities are consistent with the Delta Plan. Pursuant to this subdivision, the council may initiate consultation when an action by a state agency is contrary to the Delta Plan.

(b) Any affected person may seek review by the council of an actual or proposed action of a state agency to determine whether that action is consistent with the Delta Plan. The council shall establish guidelines to implement this subdivision.

85220. Nothing in this chapter affects the authority of the Department of Fish and Game or the board.

### CHAPTER 3. CONSISTENCY OF STATE AND LOCAL PUBLIC AGENCY ACTIONS

85225. A state or local public agency that proposes to undertake a covered action, prior to initiating the implementation of that covered action, shall prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and shall submit that certification to the council.

85225.5. To assist state and local public agencies in preparing the required certification, the council shall develop procedures for early consultation with the council on the proposed covered action.

85225.10. (a) Any person who claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal with regard to a certification of consistency submitted to the council.

(b) The appeal shall clearly and specifically set forth the basis for the claim, including specific factual allegations, that the covered action is inconsistent with the Delta Plan. The council may request from the appellant additional information necessary to clarify, amplify, correct, or otherwise supplement the information submitted with the appeal, within a reasonable period.

(c) The council, or by delegation the executive director, may dismiss the appeal for failure of the appellant to provide information requested by the council within the period provided, if the information requested is in the possession or under the control of the appellant.

85225.15. The appeal shall be filed no later than 30 days after the submission of the certification of consistency. If no person appeals the certification of consistency, the state or local public agency may proceed to implement the covered action.

85225.20. The appeal shall be heard by the council within 60 days of the date of the filing of the appeal, unless the council, or by delegation the executive director,

determines that the issue raised on appeal is not within the council jurisdiction or does not raise an appealable issue. The council shall make its decision on the appeal within 60 days of hearing the appeal.

85225.25. After a hearing on an appealed action, the council shall make specific findings either denying the appeal or remanding the matter to the state or local public agency for reconsideration of the covered action based on the findings of the council. Upon remand, the state or local public agency may determine not to proceed with the covered action or may modify the appealed action and resubmit the certification of consistency to the council. A proposed covered action appealed pursuant to these provisions and remanded to the state or local public agency shall not be implemented until the council has adopted written findings, based on substantial evidence in the record, that the covered action, as modified, is consistent with the Delta Plan.

85225.30. The council shall adopt administrative procedures governing appeals, which shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

#### CHAPTER 4. DELTA WATERMASTER

85230. (a) The board, in consultation with the council, shall appoint, for a term of four years, a special master for the Delta, whose title shall be “the Delta Watermaster.”

(b) The board shall adopt internal procedures delegating authority to the Delta Watermaster. The Delta Watermaster shall exercise the board’s authority to provide

timely monitoring and enforcement of board orders and permit terms and conditions. The Delta Watermaster's delegated authority shall include, but not be limited to, authority to require monitoring and reporting, authority for approvals delegated to an officer or employee of the board by the terms of a water right permit or license, authority to approve temporary urgency changes, and authority to issue a notice of proposed cease and desist order or administrative civil liability complaint.

(c) The internal procedures adopted by the board shall provide for due process in adjudicative proceedings, and may establish procedures for the issuance of a stay of any order or decision of the Delta Watermaster for which a petition for reconsideration is filed or reconsideration is ordered under Section 1122. The board may provide any additional duties or needs of the Delta Watermaster that the board deems necessary for effective day-to-day enforcement of its decisions.

(d) The Delta Watermaster shall submit regular reports to the board and the council including, but not limited to, reports on water rights administration, water quality issues, and conveyance operations.

#### CHAPTER 5. DELTA INDEPENDENT SCIENCE BOARD AND DELTA SCIENCE PROGRAM

85280. (a) The Delta Independent Science Board is hereby established in state government.

(1) The Delta Independent Science Board shall consist of no more than 10 members appointed by the council. The term of office for members of the Delta

Independent Science Board shall be five years. A member may serve no more than two terms.

(2) Members of the Delta Independent Science Board shall be nationally or internationally prominent scientists with appropriate expertise to evaluate the broad range of scientific programs that support adaptive management of the Delta. The members shall not be directly affiliated with a program or agency subject to the review activities of the Delta Independent Science Board.

(3) The Delta Independent Science Board shall provide oversight of the scientific research, monitoring, and assessment programs that support adaptive management of the Delta through periodic reviews of each of those programs that shall be scheduled to ensure that all Delta scientific research, monitoring, and assessment programs are reviewed at least once every four years.

(4) The Delta Independent Science Board shall submit to the council a report on the results of each review, including recommendations for any changes in the programs reviewed by the board.

(b) After consultation with the Delta Independent Science Board, the council shall appoint a lead scientist for the Delta Science Program.

(1) The lead scientist shall meet all of the following qualifications:

(A) Hold an advanced degree in a field related to water or ecosystem management.

(B) Have a strong record of scientific research and publication in peer-reviewed scientific journals in a field related to water or ecosystem management.



(C) Have experience advising high-level managers in science-based decisionmaking in the areas of water management and ecosystem restoration.

(D) Have the capability to guide the application of an adaptive management process to resource management policy decision in the Delta.

(2) The term of office for the lead scientist shall be no more than three years. The lead scientist may serve no more than two terms.

(3) The lead scientist shall oversee the implementation of the Delta Science Program. In carrying out that responsibility, the lead scientist shall regularly consult with the agencies participating in the program.

(4) The mission of the Delta Science Program shall be to provide the best possible unbiased scientific information to inform water and environmental decisionmaking in the Delta. That mission shall be carried out through funding research, synthesizing and communicating scientific information to policymakers and decisionmakers, promoting independent scientific peer review, and coordinating with Delta agencies to promote science-based adaptive management. The Delta Science Program shall assist with development and periodic updates of the Delta Plan's adaptive management program.

(c) The Delta Science Program shall function as a replacement for, and successor to, the CALFED Science Program and the Delta Independent Science Board shall replace the CALFED Independent Science Board.

SEC. 6. Chapter 2 (commencing with Section 85320) is added to Part 4 of Division 35 of the Water Code, to read:

## CHAPTER 2. BAY DELTA CONSERVATION PLAN

85320. (a) The Bay Delta Conservation Plan (BDCP) shall be considered for inclusion in the Delta Plan based on the provisions of this chapter.

(b) The BDCP shall not be incorporated into the Delta Plan and the public benefits associated with the BDCP shall not be eligible for state funding, unless the BDCP does all of the following:

(1) Complies with Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code.

(2) Complies with Division 13 (commencing with Section 21000) of the Public Resources Code, including a comprehensive review and analysis of all of the following:

(A) A reasonable range of flow criteria, rates of diversion, and other operational criteria required to satisfy the criteria for approval of a natural community conservation plan as provided in subdivision (a) of Section 2820 of the Fish and Game Code, and other operational requirements and flows necessary for recovering the Delta ecosystem and restoring fisheries under a reasonable range of hydrologic conditions, which will identify the remaining water available for export and other beneficial uses.

(B) A reasonable range of Delta conveyance alternatives, including through-Delta, dual conveyance, and isolated conveyance alternatives and including further capacity and design options of a lined canal, an unlined canal, and pipelines.

(C) The potential effects of climate change, possible sea level rise up to 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.

(D) The potential effects on migratory fish and aquatic resources.

(E) The potential effects on Sacramento River and San Joaquin River flood management.

(F) The resilience and recovery of conveyance alternatives in the event of catastrophic loss caused by earthquake or flood or other natural disaster.

(G) The potential effects of each conveyance alternative on Delta water quality.

(c) The department shall consult with the council and the Delta Independent Science Board during the development of the BDCP. The council shall be a responsible agency in the development of the environmental impact report. The Delta Independent Science Board shall review the draft environmental impact report and submit its comments to the council and the Department of Fish and Game.

(d) If the Department of Fish and Game approves the BDCP as a natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code, the council shall have at least one public hearing concerning incorporation of the BDCP into the Delta Plan.

(e) If the Department of Fish and Game approves the BDCP as a natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code and determines that the BDCP meets the requirements of this section, and the BDCP has been approved as a habitat conservation plan pursuant to the federal Endangered Species Act (16 U.S.C. Section 1531 et seq.), the council shall incorporate the BDCP into the Delta Plan. The Department of Fish

and Game's determination that the BDCP has met the requirements of this section may be appealed to the council.

(f) The department, in coordination with the Department of Fish and Game, or any successor agencies charged with BDCP implementation, shall report to the council on the implementation of the BDCP at least once a year, including the status of monitoring programs and adaptive management.

(g) The council may make recommendations to BDCP implementing agencies regarding the implementation of the BDCP. BDCP implementing agencies shall consult with the council on these recommendations. These recommendations shall not change the terms and conditions of the permits issued by state and federal regulatory agencies.

85321. The BDCP shall include a transparent, real-time operational decisionmaking process in which fishery agencies ensure that applicable biological performance measures are achieved in a timely manner with respect to water system operations.

85322. This chapter does not amend, or create any additional legal obligation or cause of action under, Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code, or Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 7. The bill shall only become operative if SB 229, SB 458, AB 39, and AB 49 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.

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Substantive

Amendment 3

On page 2, strike out lines 1 to 3, inclusive

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