

WATER CODE - WAT

DIVISION 35. SACRAMENTO-SAN JOAQUIN DELTA REFORM ACT OF 2009 [85000 - 85350]

(Division 35 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)

PART 1. GENERAL PROVISIONS [85000 - 85067]

(Part 1 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)

CHAPTER 1. Short Title and Legislative Findings [85000 - 85004]

(Chapter 1 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)

85000.

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

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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 provide for the sustainable management of the Sacramento-San Joaquin Delta ecosystem, to provide for a more reliable water supply for the state, to protect and enhance the quality of water supply from the Delta, and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85004.

The Legislature finds and declares all of the following:

(a) The economies of major regions of the state depend on the ability to use water within the Delta watershed or to import water from the Delta watershed. More than two-thirds of the residents of the state and more than two million acres of highly productive farmland receive water exported from the Delta watershed.

(b) Providing a more reliable water supply for the state involves implementation of water use efficiency and conservation projects, wastewater reclamation projects, desalination, and new and improved infrastructure, including water storage and Delta conveyance facilities.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

CHAPTER 2. Delta Policy [85020 - 85023]

(Chapter 2 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)

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) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.
- (f) Improve the 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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85022.

(a) It is the intent of the Legislature that state and local land use actions identified as "covered actions" pursuant to Section 85057.5 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.

(6) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

CHAPTER 3. Miscellaneous Provisions [85031 - 85034]

(Chapter 3 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)

85031.

(a) This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law. This division does not limit or otherwise affect the application of Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections 12200 to 12220, inclusive.

(b) For the purposes of this division, an area that utilizes water that has been diverted and conveyed from the Sacramento River hydrologic region, for use outside the Sacramento River hydrologic region or the Delta, shall not be deemed to be immediately adjacent thereto or capable of being conveniently supplied with water therefrom by virtue or on account of the diversion and conveyance of that water through facilities that may be constructed for that purpose after January 1, 2010.

(c) Nothing in this division supersedes, limits, or otherwise modifies the applicability of Chapter 10 (commencing with Section 1700) of Part 2 of Division 2, including petitions related to any new conveyance constructed or operated in accordance with Chapter 2 (commencing with Section 85320) of Part 4.

(d) Unless otherwise expressly provided, nothing in this division supersedes, reduces, or otherwise affects existing legal protections, both procedural and substantive, relating to the state board's regulation of diversion and use of water, including, but not limited to, water right priorities, the protection provided to municipal interests by Sections 106 and 106.5, and changes in water rights. Nothing in this division expands or otherwise alters the board's existing authority to regulate the diversion and use of water or the courts' existing concurrent jurisdiction over California water rights.

(Amended by Stats. 2011, Ch. 296, Sec. 315. Effective January 1, 2012.)

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) Chapter 8 (commencing with Section 12930) of Part 6 of Division 6.
- (f) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).
- (g) Section 1702.
- (h) The application of the public trust doctrine.
- (i) Any water right.
- (j) The liability of the state for flood protection in the Delta or its watershed.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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, in accordance with Chapter 5 (commencing with Section 85280) of Part 3, 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.

(e) Consistent with the responsibilities and duties assumed by the council pursuant to this section, all staff, resources, and funding within the Natural Resources Agency and the Department of Forestry and Fire Protection for the support of the CALFED Bay-Delta Program are hereby transferred to, and may be expended for the purposes of, the council. The executive officer of the council shall confer with the Director of Fish and Game, the director of the department, and the executive director of the board regarding possible reallocation of the staff and resources. The status, position, and rights of any officer or employee shall not be affected by this transfer and all officers and employees shall be retained pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(Amended by Stats. 2011, Ch. 296, Sec. 316. Effective January 1, 2012.)

PART 2. EARLY ACTIONS [85080 - 85089]

(Part 2 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)

85080.

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

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85084.

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

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85085.

The department shall do all of the following:

- (a) Coordinate with the Department of Fish and Game, the board, the California regional water quality control boards, and the State Lands Commission efforts to cooperate with the United States Bureau of Reclamation to construct and implement the Two-Gates Fish Protection Demonstration Project by December 1, 2010.
- (b) Evaluate the effectiveness of the Three Mile Slough Barrier project.
- (c) Expeditiously move ahead with other near term actions as identified in the Strategic Plan.
- (d) Assist in implementing early action ecosystem restoration projects, including, but not limited to, Dutch Slough tidal marsh restoration and Meins Island tidal marsh restoration.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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) For the purpose of informing planning decisions for the Delta Plan and the Bay Delta Conservation Plan, the board shall, pursuant to its public trust obligations, 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 public process shall be in the form

of an informational proceeding conducted pursuant to Article 3 (commencing with Section 649) of Chapter 1.5 of Division 3 of Title 23 of the California Code of Regulations, and shall provide an opportunity for all interested persons to participate. 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 the point of diversion of the State Water Project or 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 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 in 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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85089.

Construction of a new Delta conveyance facility shall not be initiated until the persons or entities that contract to receive water from the State Water Project and the federal Central Valley Project or a joint powers authority representing those entities have made arrangements or entered into contracts to pay for both of the following:

(a) The costs of the environmental review, planning, design, construction, and mitigation, including mitigation required pursuant to Division 13 (commencing with Section 21000 of the Public Resources Code), required for the construction, operation, and maintenance of any new Delta water conveyance facility.

(b) Full mitigation of property tax or assessments levied by local governments or special districts for land used in the construction, location, mitigation, or operation of new Delta conveyance facilities.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

PART 3. DELTA GOVERNANCE [85200 - 85280]

(Part 3 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)

CHAPTER 1. Delta Stewardship Council [85200 - 85204]

(Chapter 1 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)

85200.

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

(b) The council shall consist of seven voting 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.

- (c) (1) (A) The initial terms of two of the four members appointed by the Governor shall be four years.
- (B) The initial terms of two of the four members appointed by the Governor shall be six years.
- (C) The initial terms of the members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall be four years.
- (D) Upon the expiration of each term described in subparagraphs (A), (B), or (C), the term of each succeeding member shall be four years.
- (2) The Chairperson of the Delta Protection Commission shall serve as a member of the council for the period during which he or she holds the position as commission chairperson.
- (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 their 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.

(Amended by Stats. 2013, Ch. 356, Sec. 53. Effective September 26, 2013.)

85201.

- (a) 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.
- (b) Each member of the council shall receive the salary provided for in Section 11564 of the Government Code.
- (c) The members of the council shall be reimbursed for expenses necessarily incurred in the performance of official duties.
- (d) The council shall appoint an executive officer who shall serve full time at the pleasure of the council.
- (e) The executive officer shall hire employees necessary to carry out council functions.
- (f) The number of employees and qualifications of those employees shall be determined by the council, subject to the availability of funds.
- (g) 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.
- (h) All persons employed by the council are state employees, subject to the duties, responsibilities, limitations, and benefits of the state.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85202.

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

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85203.

The headquarters of the council shall be located in Sacramento.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

CHAPTER 2. Mission, Duties, and Responsibilities of the Council [85210 - 85214]

(Chapter 2 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)

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 or guidelines as needed to carry out the powers and duties identified in 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 membership of the council at a meeting duly called and held.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85210.5.

A majority of the voting members of the council shall constitute a quorum for the transaction of the business of the council. A majority vote of the voting membership shall be required to take action with respect to any matter unless otherwise specified in this division. The vote of each member shall be individually recorded.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85212.

The council shall review and provide timely advice to local and regional planning agencies regarding the consistency of local and regional planning documents,

including sustainable communities strategies and alternative planning strategies prepared pursuant to Section 65080 of the Government Code, with the Delta Plan. The council's input shall include, but not be limited to, reviewing the consistency of local and regional planning documents with the ecosystem restoration needs of the Delta and reviewing whether the lands set aside for natural resource protection are sufficient to meet the Delta's ecosystem needs. A metropolitan planning organization preparing a regional transportation plan under Section 65080 of the Government Code that includes land within the primary or secondary zones of the Delta shall consult with the council early in the planning process regarding the issues and policy choices relating to the council's advice. No later than 60 days prior to the adoption of a final regional transportation plan, the metropolitan planning organization shall provide the council with a draft sustainable communities strategy and an alternative planning strategy, if any. Concurrently, the metropolitan planning organization shall provide notice of its submission to the council in the same manner in which agencies file a certificate of consistency pursuant to Section 85225. If the council concludes that the draft sustainable communities strategy or alternative planning strategy is inconsistent with the Delta Plan, the council shall provide written notice of the claimed inconsistency to the metropolitan planning organization no later than 30 days prior to the adoption of the final regional transportation plan. If the council provides timely notice of a claimed inconsistency, the metropolitan planning organization's adoption of the final regional transportation plan shall include a detailed response to the council's notice.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85213.

(a) The council may contract for consultant services and architectural and engineering services to assist the council with all of the following functions:

- (1) Preparation of the Delta Plan and associated environmental review.
- (2) Performance of the council's responsibilities, or the responsibilities of the Delta Independent Science Board, with respect to the Bay Delta Conservation Plan.
- (3) Determination of the consistency of state and local public agency actions with the Delta Plan.
- (4) Performance of scientific review to inform water and environmental decisionmaking in the Delta.

(b) (1) Contracts entered into pursuant to subdivision (a) for consultant services shall be exempt from Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, and any rules or

regulations adopted pursuant to those laws. Contracts entered into pursuant to subdivision (a) for architectural and engineering services shall be entered into pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, but are exempt from the requirement in Section 4526 of the Government Code to adopt regulations prior to contracting.

(2) The council shall not enter into a contract pursuant to subdivision (a) for consultant services unless at least three bids or proposals to do the work have been evaluated by a competitive process.

(3) The council shall establish procedures for contracting for services pursuant to subdivision (a), consistent with paragraphs (1) and (2). The procedures shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats. 2010, Ch. 336, Sec. 1. Effective September 27, 2010.)

85214.

(a) It is the intent of the Legislature to avoid any actual or apparent conflict of interest with respect to contracts entered into by the council for work relating to the Delta Plan and the Bay Delta Conservation Plan.

(b) Therefore, it is the intent of the Legislature that any contract entered into by the council for purposes of developing the Delta Plan should include provisions ensuring the independence of the contractor's work on the Delta Plan with respect to any work that the contractor may do, or may have completed, related to the Bay Delta Conservation Plan.

(Added by Stats. 2010, Ch. 718, Sec. 25. Effective October 19, 2010.)

CHAPTER 3. Consistency of State and Local Public Agency Actions [85225 - 85225.30]

(Chapter 3 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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 officer, 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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85225.25.

After a hearing on an appealed action, the council shall make specific written 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 finding that the certification of consistency is not supported by substantial evidence in the record before the state or local public agency that filed the certification. Upon remand, the state or local agency may determine whether to proceed with the covered action. If the agency decides to proceed with the action or with the action as modified to respond to the findings of the council, the agency shall, prior to proceeding with the action, file a revised certification of consistency that addresses each of the findings made by the council and file that revised certification with the council.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

CHAPTER 4. Delta Watermaster [85230- 85230.]

(Chapter 4 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)

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 license and permit terms and conditions. The Delta Watermaster's delegated authority shall include 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 pursuant to Chapter 6.6 (commencing with Section 1435) of Part 2 of Division 2, and authority to issue a notice of a proposed cease and desist order or administrative civil liability complaint. The Delta Watermaster's authority shall be limited to diversions in the Delta, and for the monitoring and enforcement of the board's

orders and license and permit terms and conditions that apply to conditions in the Delta.

(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.

(Amended by Stats. 2011, Ch. 296, Sec. 317. Effective January 1, 2012.)

CHAPTER 5. Delta Independent Science Board and Delta Science Program [85280-85280.]

(Chapter 5 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)

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 decisions 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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

CHAPTER 1. The Delta Plan [85300 - 85309]

(Chapter 1 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)

85300.

(a) On or before January 1, 2012, the council shall develop, adopt, and commence implementation of the Delta Plan pursuant to this part that furthers the coequal goals. The Delta Plan shall include subgoals and strategies to assist in guiding state and local agency actions related to the Delta. In developing the Delta Plan, the council shall consider each of the strategies and actions set forth in the Strategic Plan and may include any of those strategies or actions in the Delta Plan. The Delta Plan may also identify specific actions that state or local agencies may take to implement the subgoals and strategies.

(b) In developing the Delta Plan, the council shall consult with federal, state, and local agencies with responsibilities in the Delta. All state agencies with responsibilities in the Delta shall cooperate with the council in developing the Delta Plan, upon request of the council.

(c) The council shall review the Delta Plan at least once every five years and may revise it as the council deems appropriate. The council may request any state agency with responsibilities in the Delta to make recommendations with respect to revision of the Delta Plan.

(d) (1) The council shall develop the Delta Plan consistent with all of the following:

(A) The federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), or an equivalent compliance mechanism.

(B) Section 8 of the federal Reclamation Act of 1902.

(C) The federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.).

(2) If the council adopts a Delta Plan pursuant to the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the council 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.

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

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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, in a manner consistent with the coequal goals. For the purpose of carrying out this subdivision, the commission may include in the proposal the relevant strategies described in 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 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 by 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. The council shall consider the proposal and may include any portion of the proposal in the Delta Plan if the council, in its discretion, determines that the portion of the proposal is feasible and consistent with the objectives of the Delta Plan and the purposes of this division.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85302.

(a) The implementation of the Delta Plan shall further the restoration of the Delta ecosystem and a reliable water supply.

(b) The geographic scope of the ecosystem restoration projects and programs identified in the Delta Plan shall be the Delta, except that the Delta Plan may include recommended ecosystem projects outside the Delta that will contribute to achievement of the coequal goals.

(c) The Delta Plan shall include measures that promote all of 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) Reduced threats and stresses on the Delta ecosystem.

(5) Conditions conducive to meeting or exceeding the goals in existing species recovery plans and state and federal goals with respect to doubling salmon populations.

(d) The Delta Plan shall include measures to promote a more reliable water supply that address all of the following:

(1) Meeting the needs for reasonable and beneficial uses of water.

(2) Sustaining the economic vitality of the state.

(3) Improving water quality to protect human health and the environment.

(e) The following subgoals and strategies for restoring a healthy ecosystem shall be included in the Delta Plan:

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

- (2) Establish migratory corridors for fish, birds, and other animals along selected Delta river channels.
- (3) Promote self-sustaining, diverse populations of native and valued species by reducing the risk of take and harm from invasive species.
- (4) Restore Delta flows and channels to support a healthy estuary and other ecosystems.
- (5) Improve water quality to meet drinking water, agriculture, and ecosystem long-term goals.
- (6) Restore habitat necessary to avoid a net loss of migratory bird habitat and, where feasible, increase migratory bird habitat to promote viable populations of migratory birds.
- (f) The council shall consider, for incorporation into the Delta Plan, actions designed to implement the subgoals and strategies described in subdivision (e).
- (g) In carrying out this section, the council shall make use of the best available science.
- (h) The Delta Plan shall include recommendations regarding state agency management of lands in the Delta.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85303.

The Delta Plan shall promote statewide water conservation, water use efficiency, and sustainable use of water.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85304.

The Delta Plan shall promote options for new and improved infrastructure relating to the water conveyance in the Delta, storage systems, and for the operation of both to achieve the coequal goals.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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 strategic levee investments.

(b) The council may incorporate into the Delta Plan the emergency preparedness and response strategies for the Delta developed by the California Emergency Management Agency pursuant to Section 12994.5.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85306.

The council, in consultation with the Central Valley Flood Protection Board, shall recommend in the Delta Plan priorities 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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85307.

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

(b) The Delta Plan may include local plans of flood protection.

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

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

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85308.

The Delta Plan shall meet all of the following requirements:

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

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

(c) Where appropriate, utilize monitoring, data collection, and analysis of actions sufficient to determine progress toward meeting the quantified targets.

(d) Describe the methods by which the council shall measure progress toward achieving the coequal goals.

(e) Where appropriate, recommend integration of scientific and monitoring results into ongoing Delta water management.

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

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

85309.

The department, in consultation with the United States Army Corps of Engineers and the Central Valley Flood Protection Board, shall prepare a proposal to coordinate 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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

CHAPTER 2. Bay Delta Conservation Plan [85320 - 85322]

(Chapter 2 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)

85320.

(a) The Bay Delta Conservation Plan (BDCP) shall be considered for inclusion in the Delta Plan in accordance with 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 Delta conveyance alternatives in the event of catastrophic loss caused by earthquake or flood or other natural disaster.

(G) The potential effects of each Delta 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 the 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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)

CHAPTER 3. Other Plans for the Delta [85350- 85350.]

(Chapter 3 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)

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.

(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)