

Date of Hearing: June 17, 2025

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

SB 650 (Cabaldon) – As Amended April 9, 2025

SENATE VOTE: 34-0

SUBJECT: The Sacramento-San Joaquin Delta Reform Act of 2009

SUMMARY: Makes clarifying changes regarding consistency certifications and legal challenges under the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act) and specifies that provisions of the Delta Plan are severable. Specifically, **this bill:**

- 1) Clarifies the definition of “person” under the Delta Reform Act so that local public agencies may appeal a consistency certification by the Delta Stewardship Council (DSC).
- 2) Requires a legal challenge to DSC’s adoption of, or amendment to, the Delta Plan or action to change the appeal procedure for a consistency certification to follow writ of mandate procedures for quasi-legislative decisions [per Code of Civil Procedure (CCP) § 1085] and to be filed within 90 days.
- 3) Requires a legal challenge to DSC’s determination regarding an appeal of a consistency certification to follow writ of mandate procedures for quasi-judicial decisions (per CCP § 1094.5) and to be filed within 90 days of DSC’s adoption of written findings on the appeal.
- 4) Provides that provisions of the Delta Plan are severable. Meaning that if any provision of the Delta Plan is held invalid, that invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.

EXISTING LAW:

- 1) Establishes the coequal goals of providing a reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem pursuant to the Delta Protection Act of 1992 and the Delta Reform Act (Public Resources Code § 29702 and Water Code § 85054, respectively).
- 2) Establishes DSC as a state agency to develop and implement a “Delta Plan” to guide state and local agency actions in the Delta 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 (Water Code § 85200 *et seq.*).
- 3) Requires state and local agencies proposing “covered actions” in the Delta to certify to DSC that the covered action is consistent with the Delta Plan. Any person that believes a covered action is inconsistent with the Delta Plan may file an appeal within 30 days with DSC to review the covered action’s consistency with the Delta Plan (Water Code § 85225 *et seq.*).
- 4) Requires DSC to hear an appeal of a consistency certification within 60 days of the date of filing, and requires DSC to make its decision on an appeal within 60 days of hearing the appeal (Water Code § 85225.20).

- 5) Defines “covered action” as a plan, program, or project consistent with the definition of “project” under the California Environmental Quality Act that meets the following: (1) will occur in 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 the Delta Plan; and (4) will have a significant act on achievement on the co-equal goals for the Delta or government-sponsored flood protection programs in the Delta. Provides a “covered action” does not include specified activities by state and local agencies that occur in the Delta (Water Code § 85057.5).
- 6) Defines a “person” as any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company (Water Code § 19).
- 7) Prescribes procedures to challenge a quasi-legislative administrative decision through a petition for writ of mandate (CCP § 1085).
- 8) Prescribes procedures to challenge a quasi-judicial administrative decision through a petition for a writ of mandate (CCP § 1094.5).
- 9) Provides that any petition for judicial review of a local agency decision shall be filed within 90 days (CCP § 1094.6).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** According to the author, “With fifteen years of experience implementing the Delta Reform Act, there are clear lessons on how we can improve the framework to provide more certainty for needed projects and facilitate the implementation of the Delta Plan.... [This bill] will provide critical updates to the Delta Reform Act, clarifying the ability of public entities to engage in appeal processes, establishing a time limit for challenging [DSC] actions to provide certainty for beneficial public projects to move forward, and ensuring an enforceable state plan for the Delta continues to protect the Delta even if part of the Plan is challenged in court.... These changes will strengthen overall protections for the Delta ecosystem, affirm the ability for all parties to fairly participate, and create more certainty for projects that advance the goals of the Delta Plan.” The author worked with DSC to develop the language in this bill.
- 2) **Background.** The Delta is formed by the confluence of the Sacramento and San Joaquin rivers and covers about 1,150 square miles in Sacramento, San Joaquin, Contra Costa, Solano, and Yolo counties. It is the largest estuary on the West Coast and contains a variety of habitat types for over 700 species of fish and wildlife. There are about 70 islands in the Delta that have been created from what was historically tidal marshland through the construction of over 1,100 miles of levees. The Delta is the largest single source of water supply for California, conveying water from Northern California to agricultural lands and communities in Southern California. The region itself supports a productive agricultural and recreational economy and is home to unique cultural and historic resources. The Delta and the values it provides to Californians have long been in crisis.

Delta Reform Act. In 2009, the Legislature enacted the Delta Reform Act to improve conditions in, and achieve the state’s co-equal goals for, the Delta. These co-equal goals are: (1) to provide a reliable water supply and (2) to protect, restore, and enhance the Delta

ecosystem. Among other provisions, the Delta Reform Act established DSC and charged it with developing, adopting, and beginning implementation of a Delta Plan by January 1, 2012 that will lead to the achievement of the co-equal goals.

Certain actions by state and local agencies (“covered actions”) must be consistent with the Delta Plan. To determine consistency, a state or local agency must submit a written consistency certification to DSC. “Covered action” refers broadly to programs or projects implemented by a state or local agency within the Delta that have an impact on achieving the co-equal goals. Various actions by state and local agencies are excluded from the definition of “covered action,” including: regulatory actions, routine maintenance of water and transportation infrastructure, and most actions in the Delta secondary zone. Delta conveyance is a “covered action” and the Department of Water Resources and the Delta Conveyance Design and Construction Authority will need to submit a consistency determination to DSC before building and operating it.

A consistency certification submitted to DSC by a state or local agency is deemed valid unless it is appealed. Under the Delta Reform Act, a person who believes a “covered action” is inconsistent with the Delta Plan may file an appeal with DSC. The appeal must contain detailed information as to why the action is inconsistent and must be filed within 30 days of the submittal of a consistency certification. This bill clarifies that local agencies are able to file appeals with DSC and clarifies procedures for legal challenges to actions of DSC.

Severability clause. This bill includes a severability clause that states if any provision of the Delta Plan is held invalid, that invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application. This provision is included as a response to the 2016 superior court decision that invalidated the entire Delta Plan, though DSC appealed the decision and ultimately had the plan reinstated [*Delta Stewardship Council Cases* (2020) 48 Cal. App. 5th 1014].

- 3) **Arguments in support.** DSC supports this bill noting that its provisions “are based on lessons learned over the past 15 years of Delta management under the Delta Reform Act.” DSC asserts the changes in this bill will increase efficiency and clarity in DSC’s regulatory and review processes. Specifically regarding this bill’s provisions regarding legal challenges under the Delta Reform Act, DSC maintains “presently, [DSC] actions are potentially subject to the default three-year statute of limitations under the [CCP].... The statute of limitations proposed in [this bill] provides certainty to projects who have undertaken years of review and permitting, and is similar yet somewhat longer, than that of similar state agencies such as the Delta Protection Commission and the Tahoe Regional Planning Authority.”
- 4) **Dual-referral.** This bill has also been referred to the Assembly Judiciary Committee.
- 5) **Related legislation.** SBx7 1 (Simitian), Chapter 5, Statutes of 2009-10 Seventh Extraordinary Session, enacts the Delta Reform Act.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Water Agencies
California Central Valley Flood Control Association

Delta Stewardship Council

Opposition

None on file

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