2009 PROPOSED DELTA/WATER LEGISLATION: PERSPECTIVES ON THE PACKAGE

BACKGROUND PAPER: ISSUES FOR LEGISLATIVE ACTION

ASSEMBLY WATER, PARKS & WILDLIFE COMMITTEE
SENATE NATURAL RESOURCES AND WATER COMMITTEE
HEARING – AUGUST 18, 2009

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The Sacramento–San Joaquin River Delta (Delta) forms the centerpiece for this year's legislative actions related to water. While this year's bills relate to more than just the Delta, the most significant legislation has some connection to the Delta, direct or indirect. The water conservation bills, for example, arise from the Delta debate, in order to reduce reliance on water imports from the Delta. This paper therefore concentrates attention on the Delta.

I. Introduction: The Delta

The Delta ecosystem is the most valuable estuary ecosystem on the west coast of North or South America, a natural resource of hemispheric importance. Created by the confluence of the Sacramento and San Joaquin rivers as they flow into San Francisco Bay from the north and south, respectively, the estuary is a maze of tributaries, sloughs, and islands. It contains the largest brackish estuarine marsh on the West Coast. The Delta ecosystem, the largest wetland habitat in the western United States, supports more than 750 wildlife species and more than 120 species of fish, as well as one of the state's largest commercial and recreational fisheries. The Delta estuary also provides migration corridors for two-thirds of the state's salmon and nearly half of the waterfowl and shorebirds along the Pacific flyway.

The Delta also serves as the heart and a critical crossroads of California's water supply and delivery structure. California's precipitation falls predominantly north and upstream of the Delta, whereas much of the state's urban and agricultural water uses occur south of the Delta. The state's two major water projects, the federal Central Valley Project (CVP) and California's State Water Project (SWP), store water in major reservoirs upstream of the Delta, convey water through the Delta, and export the Delta's water south from project pumps in the south Delta. As the water flows from the Sierra toward the Delta, cities and farmers draw water from the system.

The Delta's value as an ecological resource and its role in meeting California's water supply needs have resulted in inherent conflict. The disparate functions and values of the Delta and the competing demands for its resources have long been sources of bitter conflicts and profound challenges for stakeholders and policy makers. Between the state and federal governments, at least twenty agencies share and sometimes contest responsibility for Delta issues. Local entities within the Delta's watershed multiply that number several fold. Affected stakeholders number in the hundreds. These interests have engaged in conflict for decades.

[NOTE: This introduction comes from "California's Delta: Challenges of Collaboration," by David Nawi and Alf W. Brandt, in Large-scale Ecosystem Restoration: Five Case Studies from the United States.]

II. The Delta Crisis

The Delta has suffered from multiple crises for several years – ecosystem, water supply, levee stability, water quality, policy, program, and litigation. The first public symptom of the current Delta Crisis occurred in June 2004. A privately owned levee unexpectedly failed, not in the middle of a flood, but on a clear day in June. When the State initially refused to repair the levee, local advocates convinced Governor Schwarzenegger, on a helicopter visit to the levee break, to use state funds to fix the private levee. The State spent nearly $100 million to fix the levee and restore an island whose property value was far less. The Department of Water Resources (DWR) subsequently released an analysis showing the substantial risk of cataclysmic failure of multiple Delta levees and began development of a "Delta Risk Management Strategy" to further assess levee risks and set a strategy for Delta levee programs.

Ecosystem Crisis: In early 2005, the Department of Fish & Game (DFG) reported a trend showing severe decline in the Delta fishery and the food web on which the fishery depends. DFG and other agencies began an investigation of this "Pelagic Organism Decline" or "POD." The POD investigation identified three *categories* of causes for the decline – state/federal water project operations in the Delta, invasive species, and contaminants – but did not attribute the decline to one particular source of the problems. The ecosystem continued its decline, with record-low reports of fish populations. Between 2006 and 2007, a population index for Delta smelt, which are unique to the Delta and listed as "threatened" under the federal Endangered Species Act, dropped from 341 to 25, when the index had been in the thousands just a few years earlier. Salmon, which pass through the delta between the ocean and spawning grounds, have suffered such a serious decline that, for the first time in history, sport and commercial fishing for salmon has shut down completely, throwing thousands out of work – two years in a row.

Delta Program Crisis: In 2005, the CALFED Bay-Delta Program, which had relied on bond funding, reported dwindling financial resources. In response, the Legislature cut the CALFED budget and the Governor initiated a wide-ranging program, governance and fiscal audit, which revealed substantial deficiencies. The Little Hoover Commission published a comprehensive report on CALFED and Delta governance – *Still Imperiled, Still Important* – in late 2005. The following year, the Legislature reorganized CALFED programs and funding under the Resources Agency Secretary, and required development of a new long-term "vision" for the Delta. The California Bay-Delta Authority, which has legal responsibility for oversight of CALFED has not met in several years, as the State considers new directions for the Delta.

Water Supply Crisis: In 2007, a federal judge, acting under the federal Endangered Species Act, declared certain federal biological opinions about near-extinct fish illegal and restricted water exports from the Delta, to the San Francisco Bay Area, the San Joaquin Valley and Southern California. Those restrictions limit water flowing backwards toward the pump and impose other limits to protect the fishery. As a result, the federal Central Valley Project (CVP) and the State Water Project (SWP) suffer limits on pumping to refill reservoirs and deliver water for agricultural and urban uses. Shortly after the judge restricted pumping, the Governor called the Legislature into an extraordinary session on water, but the Legislature only passed a water project appropriation bill. Compounding the export limitations, the Delta watershed has suffered a serious drought for the last several years, leading to a comparatively small segment of agricultural water contractors suffering substantial cuts in water deliveries from the Delta. The

judge's restrictions on pumping have been replaced by new federal biological opinions for delta smelt and salmon, which adopted similar restrictions.

Delta Levee Crisis: The State's response to the June 2004 Jones Tract levee failure underscored the risks of Delta levee failures. Delta agriculture, after 150 years of plowing peat and releasing carbon, has led to substantial subsidence, with some islands as much as 30 feet below the adjacent water level. After the Governor overruled DWR's decision against fixing the private levee protecting Jones Tract, the State spent approximately $100 million to fix the levee and restore the island. DWR then began studying and developing new policies for how to respond to Delta levee failures. Hurricane Katrina's devastation added urgency, and shortly thereafter DWR unveiled a scenario where an earthquake could destroy 30 Delta islands and create a deep inland sea, due to inundation from San Francisco Bay. Growing concerns about mass Delta levee failure risks have led to fundamental re-examination of Delta policy.

Water Quality Crisis: The quality of Delta water also continues to decline. There are two categories of water quality challenges in the Delta – salinity and contaminants. As a river estuary, salinity naturally pushes upstream from the San Francisco Bay. Since the 1930's, California has developed a freshwater barrier to that salinity, with upstream reservoir releases that push back salinity and feed fresh Sacramento River water to South Delta water export pumps. With sea-level rise, that barrier becomes more difficult to maintain. This year, in order to preserve water supply, federal and state water projects did not make certain 2009 water releases from project reservoirs, leading to violations of Delta water quality standards. Salinity and other contaminants also come downstream, from the burgeoning Central Valley communities and economy. Both agricultural and urban communities contribute contaminants. Recent reports on Delta contaminants have noted the significant contributions from the Sacramento region, including home pesticide-laden runoff and ammonia from the regional water treatment facility.

Litigation Crisis: Since the Delta Ecosystem Crisis emerged in 2005, parties on all sides of the Delta debate have filed numerous lawsuits. Environmental groups filed lawsuits that led to the 2007 state and federal court decisions limiting water exports. Agricultural and urban water users have filed suits against the new ESA biological opinions. In-Delta parties have filed suit against state agencies, regarding investigations of the Peripheral Canal, the developing "Bay Delta Conservation Plan," and inaction by the State Water Resources Control Board (SWRCB). More than 25 lawsuits now stand on Delta-related issues.

III. Delta Vision

Through this enduring Delta crisis, the Legislature and the Governor initiated, in 2006, a process to develop a new long-term vision for the Delta. SB 1574 (Kuehl/2006) required a cabinet committee to present recommendations for a Delta strategic vision. The Governor created a Delta Vision Blue-Ribbon Task Force to advise the Cabinet Committee. The Task Force produced an October 2008 Strategic Plan, which the Cabinet Committee largely adopted and submitted, with its recommendations, to the Legislature on January 3, 2009. The primary exception to the Cabinet Committee's adoption was the Task Force's recommendation for a new comprehensive, independent "California Delta Water and Ecosystem Council."

Strategic Plan: The Delta Vision Strategic Plan provides a broad framework – and an expedited timeline – for action in the Delta, with numerous recommendations requiring action by the Legislature. The Strategic Plan included goals, strategies and actions for achieving the Delta Vision. The goals included:

1) Legally acknowledge the co-equal goals of restoring the Delta ecosystem and creating a more reliable water supply for California.
2) Recognize and enhance the unique cultural, recreational and agricultural values of the California Delta as an evolving place, an action critical to achieving the co-equal goals.
3) Restore the Delta ecosystem as the heart of a healthy estuary.
4) Promote statewide conservation efficiency, and sustainable use.
5) Build facilities to improve the existing water conveyance system and expand statewide storage, and operate both to achieve the co-equal goals.
6) Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and strategic levee investments.
7) Establish a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve these goals.

The Strategic Plan also includes numerous strategies to achieve those goals and specified actions to implement the strategies. In some cases, the actions identified issues that still needed further analysis and a final decision, which may include making tradeoffs among the often competing Delta interests. In other cases, the actions required legislation to further develop what may be a concept or an idea for a new direction in the Delta. The Strategic Plan may be found on the Delta Vision website, at www.deltavision.ca.gov.

Pursuant to the 2006 Delta Vision legislation, the specified Cabinet Committee considered the Task Force's Strategic Plan and made its own recommendations to the Legislature. These recommendations adopted almost all the Task Force recommendations, except for the creation of a new Delta Council, which the Cabinet Committee recommended only for further study. The Cabinet Committee also expanded on some of the recommendations, specifying needs for legislation to implement the recommendations, including details as to a new Delta conservancy and changes to water diversion/use reporting.

The Delta Vision Blue Ribbon Task Force formally dissolved once it delivered the Strategic Plan to the Cabinet Committee. Task Force members, however, then established the Delta Vision Foundation, with support from the Packard Foundation. More information about the Delta Vision Foundation may be found at www.deltavisionfoundation.org.

IV. Why Change? Why Now?

While the Delta suffers from these multiple crises, some have questioned the ambitious timeline for taking action this year, as proposed by the Delta Vision Task Force. Others, including Governor Schwarzenegger, respond that resolving California's water challenges remains one of the most urgent issues facing State Government. The urgency arises from several sources:

- *Risk of Ecosystem Collapse:* Several Delta fish species teeter on the brink of extinction. California has suffered two years of complete closure of the salmon fishing season – for the first time in state history. The fishing industry cannot afford to suffer additional years of fishery decline without any plan for resolving the Delta crisis.

- *Risk of Unreliable Water Supplies:* In 2007, a federal judge restricted water exports from the Delta and California has suffered a serious drought since then. In light of the Delta ecosystem decline, water exports remain unreliable, subject to state and federal laws regarding water rights and the environment. If this most valuable estuary ecosystem does not improve soon, then water supply from the Delta will remain unreliable.
- *Risk of Mass Levee Failure:* DWR has described a scenario where a major earthquake could cause collapse of multiple levees and loss of 30 Delta islands. (According to U.S. Geological Survey, there is a 62% chance that an earthquake of magnitude 6.7 or greater will hit the Delta between 2003 and 2032.) With loss of these deeply subsided islands, the Delta would be inundated with salt water from San Francisco Bay, shutting down any water exports from the Delta and recovery requiring up to two years. Some islands may never be restored and the nature of the Delta and its ecosystem would change forever.
- *Delta Vision Strategic Plan:* The Delta Vision Blue Ribbon Task Force spent two years of careful study of the Delta challenges and provided a comprehensive set of specific recommendations that provides the basis for the Legislature to act this year.

With these factors in mind, legislators and legislative leadership have worked extensively on understanding the water issues facing California and developing legislative proposals to address California's water challenges.

V. 2009 Legislative Deliberations

After delivery of the Delta Vision recommendations from the Cabinet Committee and the Strategic Plan on January 3, the Legislature began deliberations as to how to respond. These deliberations started with informational hearings in both the Assembly and Senate policy committees. The Committees heard from Delta experts, Task Force members, the Schwarzenegger Administration as well as the public at large. Assembly Water, Parks & Wildlife subsequently heard from Natural Resources Agency Secretary Mike Chrisman, as to how the Administration proposed responding to the Delta Vision recommendations.

In March, Senate President *Pro Tempore* Darrel Steinberg and Assembly Speaker Karen Bass convened two bicameral and bipartisan legislator discussion groups regarding Delta Vision, one on creating a new Delta plan (led by Assembly policy committee chair Jared Huffman) and one on Delta governance (led by Senate policy committee chair Fran Pavley). The legislators heard from Delta Vision Task Force members and other Delta experts, and engaged in vigorous water policy discussions, although there was no discussion of specific legislation. Participants gained a broader understanding of the key water and Delta issues facing California.

After the member discussion groups concluded, several legislators who had introduced Delta bills began developing detailed legislative proposals, which culminated in the pre-print proposals now pending. Legislators and staff discussed numerous issues, as they developed their proposals into one package of Delta bills. Concurrently, two water conservation bills proceeded through the regular legislative process – AB 49 (Feuer) and SB 261 (Dutton). Discussions regarding water bills continued through June and July. When the legislative authors did not complete their internal deliberations on the specific language of proposed Delta bills, a decision was made to take the bills to conference committee, so there would be sufficient opportunity for a robust legislative and public consideration of these issues.

VI. Legislative Issues

The Delta Vision Task Force Strategic Plan identified numerous issues requiring legislative action, addressing all seven Strategic Plan goals. In essence, the Strategic Plan offered recommendations to address new directions and decisions for the Delta. That is, the Task Force recommended new *directions* for Delta management and policy, and how *decisions* as to those directions should be made. These categories of recommendations have become labeled as "the Delta Plan" and "Delta Governance." The Task Force also made recommendations on a third category – contained in its fourth goal – related to improving statewide water management. Within these three categories, numerous issues arise. The bills that will be considered in both policy and conference committees address many of these issues.

A. Delta Plan

The Delta enjoys – or suffers from (depending on your perspective) – a long history of "plans." The most recent comprehensive plan was the August 2000 CALFED Bay-Delta Program Record of Decision (CALFED ROD), which remains in effect but largely has been abandoned. Now, the Natural Resources Agency, DWR, the state/federal water contractors and other "potentially regulated entities" (PREs) have been developing a new "Bay-Delta Conservation Plan" or "BDCP," in cooperation with a stakeholder steering committee. BDCP developed in response to the collapse of fishery populations, particularly those listed as threatened pursuant to the federal Endangered Species Act (ESA).

These plans responded to previous conflicts between water project operations and the Delta ecosystem, but were not the only plans developed in response to Delta difficulties. Many state and local agencies have Delta plans, to address one problem or another. In response to increasing development in the Delta, the Legislature created the Delta Protection Commission (DPC), which created a “resource management plan” and oversees land-use decisions in the Delta, particularly in the “primary zone.” DWR currently is developing a “Delta Risk Management Strategy” (DRMS), to address the risk of multiple levee failure and transformation of the Delta into a deep-water inland sea. The Department of Boating and Waterways has a plan for eliminating invasive plants that choke Delta waterways, by application of herbicides. While all these plans may help address problems in the Delta, they lack integration into a larger comprehensive plan, which may resolve conflicting policy objectives.

The Delta Vision Blue Ribbon Task Force (Task Force) recommended numerous actions, but central to all those recommendations was development of a comprehensive plan for moving forward in the Delta. This Strategic Plan proposal encompasses more than previous plans, which have focused on water-related issues. This plan would include all six substantive Delta Vision goals and, for the first time, connect land and water policies in the Delta. This proposed plan, in conjunction with a new Delta Council, would accomplish comprehensive reform of Delta policy that cuts across multiple policy areas and state agencies, thereby reducing interagency conflict over direction of Delta policy. It is intended to integrate all Delta policies and adapt as the Delta changes, responding to both climate change and human-induced changes.

1. Delta Plan Development Process

The Task Force's Strategic Plan recommends, in Strategy 7.2, that the Council develop the Delta Plan by December 2010, after the Legislature adopts a legal and procedural outline for the Plan. The timing of this development process reflects the urgency of resolving the Delta crisis, but may be affected by other developments in the Delta, particularly the development of the BDCP. The Natural Resources Agency currently plans to complete the BDCP by the end of 2010, although some question the likelihood of completing this comprehensive plan and obtaining the necessary regulatory approvals by that date. While the new Council may have ultimate responsibility to adopt a final Delta Plan, existing agencies with responsibilities in the Delta will need to contribute to the Plan's development if the 2011 deadline is to be achieved.

The plan development process will require numerous elements of information and decision. The needs of the Delta form the foundation for developing a new Delta Plan, but information as to those needs, particularly in light of constant change in the Delta, remains limited. Certain information, such as the Delta's needs for instream flows, may be a prerequisite for completing the Delta Plan. The Strategic Plan also identified several factual issues requiring further investigation, and policy issues requiring the judgment of the State's legislative and executive branches.

2. Substantive Issues in Delta Plan

The Delta Vision Strategic Plan – and the Delta Plan it recommends – was unique in its comprehensive scope. Past plans have been limited by either agencies' existing legal authorities or the priorities of the agencies that developed the plan. This new Delta Plan would address the six substantive goals in the Strategic Plan. The Strategic Plan identifies strategies and actions to achieve each goal, which raise issues for legislative consideration.

- ***Co-equal Goals:*** How should the Legislature incorporate the "Co-equal Goals" of water supply reliability and ecosystem restoration into the constitution or law? What does "water supply reliability" mean – more water or more regularity? Do the Co-equal Goals incorporate the additional goal of protecting "the Delta as Place," which the Strategic Plan describes as the "third leg of the stool" but addresses separately from the Co-equal Goals? How do the Co-equal Goals apply to water bond proposals and existing water laws and principles? Do the Co-equal Goals constrain or require existing agency action?
- ***Delta as Place:*** How can the State protect the current "unique cultural, recreational, and agricultural values of the California Delta" while concurrently changing direction in Delta policy? What does the Delta "as an evolving place" mean? Who develops the plans for how to protect the Delta as a place? What land-use policies "enhance" the Delta's unique values?
- ***Ecosystem Restoration:*** What does "restoration" mean? How should the Legislature define a "healthy Delta estuary ecosystem?" What are the stressors on the Delta ecosystem that need to be addressed? How should Delta water quality be improved for ecosystem needs? Which of the many recommended strategies and actions should the Legislature adopt? What are the implications for salinity fluctuation in an *estuary* ecosystem? How broad is the geographic scope of ecosystem restoration – the legal Delta or the entire watershed? Who has responsibility for planning and implementing ecosystem restoration?

- ***Statewide Water Management:*** How closely should statewide water conservation efforts connect to Delta management? How does the Governor's call for 20% reduction in per capita water use relate to the Delta? Should the new Delta Stewardship Council oversee efforts for regional water self-sufficiency and water-use reduction contingency plans? What water-use reporting requirements/changes, as recommended by the Delta Vision Cabinet Committee, should the Legislature adopt? How should the Delta Plan address deteriorating Delta water quality to ensure adequate drinking water quality? How should decisions as to State investments in water programs and infrastructure projects be made?
- ***Delta Water Infrastructure:*** How should the Legislature address the most controversial issue – Delta water conveyance? Should SWP/CVP water be conveyed through: a) current Delta channels; b) an isolated conveyance facility; or c) both current channels and an isolated conveyance? How should the Legislature incorporate the existing BDCP process, which includes both ecosystem restoration and water conveyance issues, into the Delta Plan? What information and analysis is required to make decisions on Delta water infrastructure? (The Strategic Plan recommended only further investigation of "dual conveyance.") Who should make the decision as to Delta water infrastructure, including both conveyance and storage facilities?
- ***Levee Risk Reduction & Emergency Preparedness:*** How should the Delta Plan incorporate the current effort to develop a comprehensive Delta emergency response plan? What are the State's interests in privately owned Delta levees? Does the State have any legal responsibility for maintaining private Delta levees? How should the State prioritize its investments in maintenance and improvements to private Delta levees? How do Delta land-uses affect State investments in private Delta levees, and should the State condition levee funding on appropriate land use controls? How should Delta "legacy towns" that suffer minimal flood protection be protected?

The Delta Plan recommendation also raises larger overarching issues:

- Should the Delta Plan be developed consistent with the Coastal Zone Management Act and other federal laws (Reclamation Act and Clean Water Act) to ensure that federal agencies act consistently with the Delta Plan, as the Task Force recommends?
- How can the Delta Plan ensure that State agencies act consistently with the Delta Plan?
- How should existing state agencies participate in Delta Plan development?
- How can the Delta Plan adapt to inevitable changes in the Delta?
- How can independent science contribute to development of the Delta Plan?
- How should the new Delta Plan incorporate existing or future state agency plans?

3. Bay Delta Conservation Plan

In response to the crash of populations of Delta fish listed as threatened pursuant to the federal Endangered Species Act (ESA) and related litigation, the Schwarzenegger Administration, state and federal water contractors, and certain energy companies that use Delta water for cooling adopted a new strategy for ESA compliance. Since the 1990's, both federal and state water projects have relied on the "consultation process," pursuant to ESA Section 7, to obtain biological opinions that allow certain levels of "take" (*i.e.* destruction) of listed fish species. In

2006, state and federal agencies and the "potentially regulated entities" (PREs) began developing a "habitat conservation plan" (HCP) for the Delta, which would provide an incidental take permit and assurances, under ESA Section 10, for the non-federal parties that use Delta water. This process has developed as "the Bay-Delta Conservation Plan" or BDCP process.

The Schwarzenegger Administration had suggested that this new BDCP could serve as the new comprehensive plan for the Delta, replacing the CALFED Bay-Delta Program. Since the Task Force issued the Strategic Plan, however, the Administration has framed BDCP as the foundation for the proposed Delta Plan and discouraged legislative interference in its progress. BDCP recently released a draft conservation strategy that emphasized the importance of creating an alternative conveyance system to eliminate the negative ecosystem effects on water exports in the South Delta, which may generate controversy in the months ahead. In recent months, some parties outside the BDCP process – particularly those who live and work in the Delta – have objected that they have been excluded from the BDCP process. It should be noted that the BDCP's Steering Committee meets in public, but its membership is by invitation.

The concurrent development of BDCP and the new Delta Plan raises several issues that may be considered in the Delta legislation. It appears that BDCP will address a subset of the issues addressed by the Delta Plan – water conveyance and ecosystem restoration. Its ultimate success, however, may depend on actions in the new Delta Plan.

- How should the two plans interact with each other? Is BDCP part of the Delta Plan?
- How should the new Delta Plan incorporate the Bay Delta Conservation Plan?
- Should legislation impose substantive or procedural requirements on BDCP, or establish a clear path for the State's adoption of the BDCP?
- Should the State fund conservation actions required to obtain the ESA take permits?

B. Delta Governance

As the Task Force indicated, successful implementation of the Delta Plan and achievement of the Co-equal Goals will require changes to the Delta's governance structure – matching a comprehensive Delta Plan with comprehensive Delta governance. The Task Force noted that more than 200 agencies have legal authority for governance in the Delta. No single state entity has authority to address the sweep of issues identified in the Strategic Plan. It is not unusual for state agencies to work at cross purposes in the Delta. Agencies typically have different missions, legal authorities, and cultures, often leading to interagency conflict. To resolve these conflicts and achieve the Co-equal Goals, the Strategic Plan proposed an independent "California Delta Ecosystem and Water Council," to make the decisions, on behalf of the State, to implement the Delta Plan.

1. Council

The proposed Council stands at the center of reform of Delta governance, but raises numerous issues as to its structure and legal authority. The Cabinet Committee concluded that creation of a new council required further study and recommended postponing a decision on a Delta council. The Committee explained that a new council would need "standards and criteria" for its decisions to ensure predictability for critical Delta activities such as water project pumping regimes. In recent months, however, the Administration has not expressed objection to the

creation of the new Council and there has been some indication that it may propose its own form for a new council. The Task Force, now in the form of the Delta Vision Foundation, continues to insist that creation of an *independent* Delta council is critical to success in the Delta.

Council Structure: The Strategic Plan made several specific recommendations as to the Council structure, including a limited number (5-7) of members with five-year staggered terms and WITHOUT any geographic, occupational or representational criteria for selection. The Council would not be "a sizeable new government bureaucracy," but instead would rely on existing state agencies to exercise their authorities to take action in the Delta to implement the new Delta Plan. The Strategic Plan explains the rationale for each of these recommendations, based on history of Delta programs and conflicts. Some may dispute some of this rationale and these structural issues would need to be considered in any legislation creating the Council.

Council Authority: The Strategic Plan proposes a Council with broad legal authority to:

- Develop and adopt the new Delta Plan.
- Enforce state agency compliance with the Delta Plan, including determinations of consistency as to new Delta infrastructure projects.
- Receive and allocate funds to advance policies and programs in the Delta.
- Resolve conflicts in the Delta.
- Act as a "Trustee Agency" to participate in CEQA processes and protect environmental resources in the Delta.

This broad authority may elicit debate from state and local agencies that may be affected by the new Council's authority.

2. Conservancy

The Strategic Plan also recommended a conservancy for the Delta, which previous legislation has proposed on several occasions, without success. Previous legislation has proposed an independent Delta conservancy or expansion of the Coastal Conservancy to include the Delta. These recommendations addressed the structure and legal authority for a new conservancy, the common issues for creating any new governance entity/agency.

Conservancy Structure: The Strategic Plan recommended an 11-member conservancy board, with five representing the Delta counties, four state agency representatives and two public members appointed by the governor. Additional non-voting members would be appointed by the Legislature and "selected" federal agencies.

Conservancy Authority: The Strategic Plan recommended that the conservancy be "devoted solely to the statutory Delta and the Suisun Marsh," and would be responsible to:

- Coordinate state ecosystem-related and urban waterfront projects in the Delta.
- Acquire or manage lands necessary for implementing the Delta Plan.
- Assume responsibility, when offered, for lands currently in government ownership.
- Receive funds from any source for projects consistent with the Council's policies/plans.
- Support appropriate recreation and ecosystem activities.
- Create incentives for "mutually beneficial mixtures" of traditional agriculture, habitat and recreation, including agri-tourism, wildlife-friendly agriculture, bird watching/hunting.

These recommendations generate several issues for further legislative consideration. The Legislature has created several conservancies to protect environmental resources in areas across the state. The legislation creating each conservancy has addressed the specific issues that arise in its area. The Task Force's recommendations reflect some of the issues that arise in the Delta:

- *Property Ownership/Management:* Federal, state and local agencies already own substantial portions of Delta lands, but there is no coordinated management of those lands. The conservancy may play the role of manager of these public lands, as a system. The recommendations above provide for conservancy land acquisition and acceptance of lands from other public agencies.
- *Economic Development:* The recommendations related to waterfront development and "mutually beneficial mixtures" hint at the possible economic development role for the conservancy. Conflict between ecosystem restoration and economic development, however, may arise, such as wetlands restoration requiring use of agricultural lands. The recommendation for "incentives" suggests that this economic/ecosystem combination may be a benefit, but not a required element of each conservancy project.
- *Bay Delta Conservation Plan:* The Strategic Plan also recommends continued investigation and development of the BDCP and its conservation action proposals. The conservancy's role in implementing those BDCP actions remains unclear.

3. Water Master

While the Strategic Plan did not recommend a Delta water master, it urged improvements to the compliance of diversions and water use with all applicable laws. Its Action 7.1.5 advocated improvements to the State Water Resources Control Board (SWRCB), to ensure better legal compliance. One way to achieve such compliance would be the creation of a water master who could oversee day-to-day water diversions in the Delta watershed.

4. Independent Science Program

The Strategic Plan emphasized the importance of good science to the development and implementation of the new Delta Plan. To improve the "direct link between scientific investigation and real-world management and policy," the Strategic Plan recommended creation of a "Delta Science and Engineering Board." Its recommendations specified membership and terms for this board. This science board would research critical scientific issues, synthesize the best available science, and review all major projects under the Delta Plan. Its role would focus more on scientific recommendations than making decisions. It would succeed and replace the successful CALFED science program.

5. Delta Protection Commission

The Strategic Plan recommended that legislation "strengthen" the existing Delta Protection Commission (DPC). To address changing state interests in the Delta, the Strategic Plan recommended:

- Revision of all DPC policies (including the Resource Management Plan) to be consistent with the new Delta Plan.
- Review and certification of all local general plans for consistency.
- Consistency determinations for development proposals in the Delta's primary zone.
- Appeal authority for land-use decisions in selected portions of the secondary zone.

The Strategic Plan generally suggests retaining the mix of state and local participation in the DPC, but also suggested adding participation from federal agencies and the Central Valley Flood Protection Board. The Strategic Plan, however, did not comment on the precise mix of DPC members.

Changes to the DPC implicate significant issues related to the state-local relationship, as the DPC's oversees local land-use decisions and general plans. The current membership includes both local and state representatives, which may change as the role of DPC changes. Requiring changes to general plans also will affect local government's compliance with CEQA.

C. Statewide Water Management

While the Strategic Plan included recommendations for statewide water management, legislation on these issues have proceeded on a separate track this year. Such separation reflects the fact that these statewide changes would affect more than the Delta watershed or areas which rely on water imports from the Delta.

1. Water Conservation

While the Legislature has passed several bills promoting water conservation in recent years, the Governor's 2008 call for Californians to reduce per capita water use by 20% by 2020 set an ambitious goal for statewide conservation. The Legislature has considered bills to achieve the Governor's call in 2008 (AB 2175/Laird) and 2009. This year, several members introduced bills to achieve the Governor's call. At this point, two bills have continued to progress – AB 49 (Feuer/Huffman) and SB 261 (Dutton) – which have fundamentally different approaches as to how to achieve water conservation.

2. Water Diversion/Use Reporting & Groundwater Reporting

According to the Strategic Plan, “Plainly said, the information about current diversions and use in the current water system is inadequate to the task of managing the co-equal values. More comprehensive data from throughout the Delta watershed would provide a better foundation for changes in water diversion timing. California must also develop and use comprehensive information on the local, regional and statewide availability, quality, use, and management of groundwater and surface water resources to help improve opportunities for regional self-sufficiency."

3. SWRCB Enforcement Authority

The Delta Vision Cabinet Committee, in its Implementation Report, called for legislation to enhance and expand the State Water Resources Control Board’s water rights administrative accountability. In particular, it called for legislation to provide the authority to collect and disseminate accurate information on all surface water diversions in the state; require interim remedies, after opportunity for hearing, to prevent irreparable harm to the environment and other water right holders, while underlying proceedings continue; initiate stream adjudications and collect adjudication costs from the parties diverting water; and to enforce existing water right permit terms and conditions.

4. Other Water Supply Alternatives

The Strategic Plan recommended that California "increase reliability through diverse regional water supply portfolios," and identified several actions, which could increase water supply reliability. Those actions include:

- ***Recycling:*** Proposes setting a statewide recycling target of 1.5 million acre-feet of water by 2020 and taking actions to facilitate greater development/use of recycled water. California is unlikely to meet its 1 million acre-foot recycled water target by 2010, and increasing recycling would require a wide range of actions to accomplish the proposed 2020 target.
- ***Desalination:*** Proposes tripling current statewide capacity for generating water through desalination of ocean and brackish water by 2020. California desalination development has been limited, for several reasons, including cost, location in the coastal zone, energy demands, and design of water distribution systems flowing downhill toward the ocean. Recent advances in desalination technology may make this alternative more attractive, particularly for groundwater basins that are only brackish, which would require removal of less salinity.
- ***Storm Water Capture:*** Proposes that the SWRCB set goals for infiltration and direct use of urban storm water runoff throughout the Delta watershed and its export areas. Historically, "storm water" issues have related to water quality and flood control, with policy focused on cleaning up storm water discharges and getting them downstream as quickly as possible. In recent years, some agencies have focused attention on ways to reduce storm water discharges and/or retain such storm water for subsequent use. The Santa Ana Watershed Project Authority provides a good example. The trend toward "low-impact development" is consistent with these efforts. The challenges for storm water capture include: connecting quality and quantity issues, which may involve different sets of actors and agencies; changing the long-standing "flood control" perspective (*i.e.* getting flood waters out of the jurisdiction as soon as possible) on storm water management; and approaching storm water from a watershed perspective, instead of jurisdiction-by-jurisdiction (or discharge-by-discharge).

D. Finance of Delta Activities

The Strategic Plan included a strategy that the State: "Finance the activities called for in the California Delta Ecosystem and Water Plan from multiple sources." That Strategy 7.3 identified several actions requiring legislation:

- Enact a series of principles regarding design of financing into legislation authorizing the California Delta Ecosystem and Water Council.
- Establish a base of revenues outside the state General Fund for the work of the California Delta Ecosystem and Water Council, the Delta Conservancy, the Delta Protection Commission, and related core activities of the Department of Fish and Game, the Department of Water Resources, and the State Water Resources Control Board.
- Find new revenue sources beyond the traditional bond funds or public allocations.

These finance recommendations will raise numerous issues as to who pays, how much, for what, and by what means. The last recommendation, in particular, moves the discussion beyond water bonds, which have paid for much of the activity in the Delta in the last decade.