

JOINT OVERSIGHT HEARING:
Assembly Water, Parks and Wildlife Committee
Senate Natural Resources and Water Committee
Assembly Budget Subcommittee No. 3
Senate Budget and Fiscal Review Subcommittee No. 2

Tuesday, March 9, 2010
State Capitol, Room 437
9:30 a.m.

FUNDING AND IMPLEMENTATION OF
2009 DELTA LEGISLATION

Background

The Sacramento–San Joaquin River Delta (Delta) formed the centerpiece of last year's legislative actions related to water and is a natural resource of hemispheric importance. The Delta ecosystem is the largest brackish estuarine marsh on the west coast and the most valuable estuary on the west coast of North or South America. 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. 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 and California's State Water Project, 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. Add affected stakeholders and the increase is exponential. These interests have engaged in conflict for decades.

The Delta Crisis & Delta Vision

The Delta has suffered from multiple crises for years – ecosystem, water supply, levee stability, water quality, policy, program and litigation. The ecosystem condition continues to deteriorate, with record-low reports of fish populations, Delta smelt and other species on the brink of extinction, and the commercial salmon season shut down completely for two years in a row. Continued drought conditions and court-ordered restrictions on water exports have led to reductions in water deliveries to agricultural water contractors. Deteriorating levees, land subsidence, earthquake risk and climate change all contribute to growing concerns about mass Delta levee failure. Delta water quality also continues to decline, as the freshwater barrier that keeps salinity from the Bay from moving upstream becomes more difficult to maintain, and both agricultural and urban communities contribute contaminants to the system. Finally, the litigation crisis grows as more than 25 lawsuits now stand on Delta-related issues.

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 2009 Delta Legislation

After delivery of the Delta Vision recommendations, the Legislature held informational hearings from Delta experts, Task Force members, and the Schwarzenegger Administration, as well as the public at large, and engaged in vigorous water policy discussions. Following the informational hearings, several legislators began developing detailed legislation which culminated in pre-print proposals being issued in early August of 2009 for public review and discussion over the summer recess. The Assembly Water, Parks and Wildlife Committee and the Senate Natural Resources and Water Committee then held joint informational hearings on the pre-print proposals and received extensive public comment. Thereafter, legislative leadership appointed a conference committee, which convened and held additional public hearings, with further legislator discussions on key issues. That work continued into the 7th Extraordinary Session, which was called by the Governor specifically to address the pending Delta and water issues, and culminated in the signing of a historic package of bills. One of the keystones of that package was SB 1 X7, which reformed Delta policy and governance. Specifically, SB 1 X7:

- Establishes a new legal framework for Delta management, emphasizing the coequal goals of "providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem" as foundation for state decisions as to Delta management.

- Reconstitutes and redefines role of the Delta Protection Commission (DPC), to narrow membership to focus on local representation and to expand DPC role in economic sustainability.
 - Requires DPC to create a regional economic sustainability plan, including creation of a Delta Investment Fund in the State Treasury.
 - Requires DPC to submit recommendations regarding potential expansion of or change to the Delta's primary zone to the Legislature.
- Creates a new Sacramento-San Joaquin Delta Conservancy (Conservancy), to support efforts that advance environmental protection and the economic well-being of Delta residents.
 - Establishes and limits the Conservancy's powers and duties, to focus its efforts on collaborative projects in the Delta and Suisun Marsh.
 - Requires the Conservancy to develop a strategic plan consistent with the Delta Plan and other applicable regional plans affecting the Delta or Suisun Marsh
 - Establishes the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury.
- Creates the Delta Stewardship Council (Council) as an independent state agency.
 - Establishes 7-member Council, with four appointments by the Governor, two by the Legislature, and the chair of the Delta Protection Commission, with staggered terms.
 - Specifies authority of Council, including appeals of state/local agency determinations of consistency with Delta Plan.
 - Repeals the CALFED Bay-Delta Authority Act and transfers existing staff, contracts, etc. to the Council.
- Creates Delta Independent Science Board (Science Board) and Delta Science Program.
- Requires the State Water Resources Control Board (SWRCB), by August 12, 2010, to develop new flow criteria for the Delta ecosystem necessary to protect public trust resources.
- Requires the Department of Fish and Game (DFG), by December 31, 2010, to develop and recommend to the SWRCB flow criteria and quantifiable biological objectives for aquatic and terrestrial species.
- Creates a Delta Watermaster as the enforcement officer for SWRCB in the Delta.
- Requires the Council to develop, adopt, and commence implementation of the "Delta Plan" by January 1, 2012, with a report to the Legislature by March 31, 2012.

- Requires the DPC to develop a proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place.
 - Requires Delta Plan to further the coequal goals of Delta ecosystem restoration and a reliable water supply.
- Requires the Delta Plan to promote statewide water conservation, water use efficiency, and sustainable use of water, as well as improvements to water conveyance/storage and operation of both to achieve the coequal goals.
- Requires the Delta Plan to 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.
- Requires the Council to consider including the Bay Delta Conservation Plan (BDCP) in the Delta Plan and makes the BDCP eligible for state funding if:
 - The BDCP complies with Natural Community Conservation Planning Act (NCCPA).
 - The BDCP complies with the California Environmental Quality Act and includes a full range of alternatives, including a reasonable range of flow criteria, rates of diversion, and other operational criteria.
 - DWR consults with the Council and Science Board during development of the BDCP.
 - The BDCP incorporates a transparent, real-time operational decisionmaking process in which the fishery agencies ensure that applicable biological performance measures are achieved in a timely manner.