
SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Henry Stern, Chair
2021 - 2022 Regular

Bill No:	SB 821	Hearing Date:	April 15, 2021
Author:	Committee on Natural Resources and Water		
Version:	March 9, 2021		
Urgency:	No	Fiscal:	Yes
Consultant:	Dennis O'Connor		

Subject: Sacramento-San Joaquin Delta: Delta Independent Science Board

BACKGROUND AND EXISTING LAW

Under current law:

- 1) The Sacramento-San Joaquin Delta (the Delta) “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.”
- 2) The Delta Stewardship Council (DSC) is created and charged with developing the Delta Plan.
- 3) “Delta Plan” means the comprehensive, long-term management plan for the Delta to achieve the coequal goals.
 - a) “Coequal goals” means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.
 - b) The Delta Plan is to meet a number of requirements, including that it “[b]e based on the best available scientific information and the independent science advice provided by the Delta Independent Science Board.” (DISB)
- 4) Creates the DISB in state government as follows:
 - a) The DISB shall consist of no more than 10 members appointed by the DSC. 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.
 - b) Members of the DISB:
 - i) 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.
 - ii) Shall not be directly affiliated with a program or agency subject to the review activities of the Delta Independent Science Board.
 - c) The DISB 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.

- d) The DISB shall submit to the DSC a report on the results of each review, including recommendations for any changes in the programs reviewed by the board.
- 5) After consultation with the DISB, the DSC shall appoint a lead scientist for the Delta Science Program.
 - a) The lead scientist shall meet all of the following qualifications:
 - i) Hold an advanced degree in a field related to water or ecosystem management.
 - ii) Have a strong record of scientific research and publication in peer-reviewed scientific journals in a field related to water or ecosystem management.
 - iii) Have experience advising high-level managers in science-based decisionmaking in the areas of water management and ecosystem restoration.
 - iv) Have the capability to guide the application of an adaptive management process to resource management policy decisions in the Delta.
 - v) 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.
 - b) 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.
- 6) 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.
 - a) 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.
 - b) The Delta Science Program shall assist with development and periodic updates of the Delta Plan's adaptive management program.

Background:

Recently, the DSC concluded that members of the DISB must be state employees.

Logic appears to be:

- 1) Article VII, Section 1(a) states, "The civil service includes every officer and employee of the State except as otherwise provided in this Constitution."
- 2) Article VII, Section 4, which lists the exceptions to Section 1(a), does not include an exception that applies to the DISB.
- 3) The exception in Section 4(d) doesn't apply because the members to the DISB are appointed by the DSC, not the Governor or Legislature.
- 4) Consequently, members of the DISB must be exempt state employees.
- 5) As the salaries for DISB members are not established in statute, they must be compensated via per diem of \$100 per day, instead of the \$4,000 per month as consultants.

The consequences of this decision have significantly impaired the ability of the DISB to recruit/retain well qualified members and calls into question its ability to do its duties.

Key issues include:

- Adequate Compensation. As employees, they may be limited in what they are paid, which would not attract the world-class scientists that the DISB is designed to include. As contractors, their compensation can focus on paying for their time, not their benefits.
- Conflicts. If they become state employees, their academic institutions may have conflicts rules, particularly those who teach at institutions outside California, such as the current chair, who teaches at Oregon State University.
- Independence. If the DISB members are employees of the DSC, there is the real concern that the DSC will direct the outcomes of DISB's scientific reviews and recommendations.

PROPOSED LAW

This bill would clarify that members of the DISB are not employees of the DSC and that the members of the DISB shall exercise their scientific judgment and perform the functions set forth in this section independently from the DSC.

ARGUMENTS IN SUPPORT

A coalition of environmental and other interests write, "The crisis with the funding of the Delta Independent Science Board must be addressed as soon as possible. The April 5, 2021 amendments to the bill address the incorrect creation of employee positions by the Delta Stewardship Council, which is the root cause of the funding crisis."

ARGUMENTS IN OPPOSITION: None received

COMMENTS

Delta Science. The creation of the current form of Delta governance was initiated in 2006 with the appointment of the Delta Vision Blue Ribbon Task Force. Through the development of the Delta Vision report, the creation of the subsequent Delta Strategic Plan, the deliberations of various legislative working groups and informational hearings, the initiation of draft legislation through development of the final chaptered bill, an overarching and continuous theme was that the ultimate Delta plan must be informed by the best independent science and reviewed by the best available scientists. The goal was to ensure the science behind the Delta plan was beyond reproach.

Not Directly Affiliated. Water Code § 85250(a)(2) states, in part, that members of the DISB:

... shall not be directly affiliated with a program or agency subject to the review activities of the Delta Independent Science Board.

The DSC's Delta Plan is clearly subject to the DISB's review, and being an employee of the DSC would clearly make the members of the DISB directly affiliated with a program or agency subject to review. This bill is simply clarifying what was intended when that provision was written a dozen or so years ago.

SUGGESTED AMENDMENTS: None

SUPPORT

California Sportfishing Protection Alliance

California Water Impact Network

California Water Research

Fly Fishers of Davis

North Coast Rivers Alliance

San Joaquin Audubon Society

Southern California Watershed Alliance

OPPOSITION

None Received

-- END --