



CALIFORNIA
BAY-DELTA AUTHORITY ACT 2003

SB 1653 (Costa)

CHAPTER 812

FILED WITH SECRETARY OF STATE SEPTEMBER 23, 2002

APPROVED BY GOVERNOR SEPTEMBER 23, 2002

PASSED THE SENATE AUGUST 29, 2002

PASSED THE ASSEMBLY AUGUST 28, 2002

AMENDED IN ASSEMBLY AUGUST 26, 2002

AMENDED IN ASSEMBLY AUGUST 7, 2002

AMENDED IN SENATE MAY 28, 2002

INTRODUCED BY Senator Costa

(Principal coauthors: Assembly Members Canciamilla and Hertzberg)

FEBRUARY 21, 2002

An act to amend Section 11552 of the Government Code, and to add and repeal Division 26.4 (commencing with Section 79400) of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 1653, Costa. California Bay-Delta Act.

Under existing law, certain state and federal agencies with management and regulatory responsibilities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary participate in the CALFED Bay-Delta Program for the purposes of improving ecosystem quality, water supply reliability, water quality, and the integrity of the levees and channels in the bay-delta.

This bill would enact the California Bay-Delta Authority Act. The bill would establish in the Resources Agency the California Bay-Delta Authority, consisting of representatives from 6 state agencies and 6 federal agencies if those federal

agencies are authorized to participate, 7 public members, one member of the Bay-Delta Public Advisory Committee, and 4 nonvoting, ex officio members of the Legislature. The bill would prescribe the authority's organization, powers, and purposes.

The bill would require the authority and the implementing agencies, as defined, to carry out the programs, projects, and activities necessary to implement the Bay-Delta Program, defined to mean those projects, programs, commitments and other actions that address the goals and objectives of the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

The bill would require the Governor to appoint a director, in consultation with the Secretary of the Interior, and would prescribe the director's salary, duties, and powers. The bill would require the authority to appoint a lead scientist and would require the lead scientist to nominate, and the authority to establish, an Independent Science Board that would advise and make recommendations to the authority and the Bay-Delta Public Advisory Committee.

The bill would require the authority to review, approve, and make recommendations regarding certain annual program plans and project expenditures submitted by the implementing agencies. The bill would require the director to prepare and submit to the Department of Finance an annual state proposed budget for identified program elements of the Bay-Delta Program and the authority's oversight and coordination duties.

The bill would repeal these provisions on January 1, 2006, unless the Secretary of the Resources Agency makes a certain determination.

The people of the State of California do enact as follows:

SECTION 1. Section 11552 of the Government Code is amended to read:

11552. Effective January 1, 1988, an annual salary of eighty-five thousand four hundred two dollars (\$85,402) shall be paid to each of the following:

- (a) Commissioner of Financial Institutions.
- (b) Commissioner of Corporations.
- (c) Insurance Commissioner.
- (d) Director of Transportation.
- (e) Real Estate Commissioner.
- (f) Director of Social Services.
- (g) Director of Water Resources.
- (h) Director of Corrections.
- (i) Director of General Services.
- (j) Director of Motor Vehicles.
- (k) Director of the Youth Authority.
- (l) Executive Officer of the Franchise Tax Board.
- (m) Director of Employment Development.
- (n) Director of Alcoholic Beverage Control.
- (o) Director of Housing and Community Development.
- (p) Director of Alcohol and Drug Abuse.
- (q) Director of the Office of Statewide Health Planning and Development.
- (r) Director of the Department of Personnel Administration.
- (s) Chairperson and Member of the Board of Equalization.
- (t) Secretary of the Trade and Commerce Agency.
- (u) State Director of Health Services.
- (v) Director of Mental Health.
- (w) Director of Developmental Services.
- (x) State Public Defender.
- (y) Director of the California State Lottery.
- (z) Director of Fish and Game.
- (aa) Director of Parks and Recreation.
- (ab) Director of Rehabilitation.
- (ac) Director of Veterans Affairs.
- (ad) Director of Consumer Affairs.

(ae) Director of Forestry and Fire Protection.

(af) The Inspector General pursuant to Section 6125 of the Penal Code.

(ag) Director of Child Support Services.

(ah) Director of the California Bay-Delta Authority.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SECTION. 2. Division 26.4 (commencing with Section 79400) is added to the Water Code, to read:

DIVISION 26.4. CALIFORNIA BAY-DELTA AUTHORITY ACT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Short Title and Legislative Findings

79400. This division shall be known and may be cited as the California Bay-Delta Authority Act.

79401. The Legislature finds and declares all of the following:

(a) The San Francisco Bay/Sacramento-San Joaquin Delta Estuary is the largest estuary on the West Coast of the United States. It includes over 738,000 acres in five counties. The tributaries, sloughs, and islands support over 750 plant and animal species.

(b) The bay-delta, its tributaries, and watershed are critical to California's economy, supplying drinking water for two-thirds of Californians and irrigation water for over 7,000,000 acres of the most highly productive agricultural land in

the world. It also supports 80 percent of the state's commercial salmon fisheries.

(c) The bay-delta is the hub of California's two largest water distribution systems - the Central Valley Project, operated by the federal Bureau of Reclamation and the State Water Project, operated by the California Department of Water Resources. It also provides the conveyance of floodwaters from most of the rivers in the Central Valley.

(d) Conflicts currently exist regarding water use for the purposes of water quality, fish protection, and water supply that demonstrate how little flexibility the state's water supply systems have to meet the state's growing demand for water and the need to protect the environment.

(e) A solution to these problems requires state, federal, tribal, and local action in numerous regions throughout the state, not only in the bay-delta itself, but also in the bay-delta watershed and the areas that depend on water exported from the bay-delta. The California Bay-Delta Program is divided into the following five regions:

- (1) Sacramento and San Joaquin River Delta.
- (2) San Francisco Bay.
- (3) Sacramento Valley.
- (4) San Joaquin Valley.
- (5) Southern California.

(f) Nearly two dozen state and federal agencies have some role in managing or regulating the natural resources of the bay-delta and its watershed. A coordinated implementation structure and organization is necessary for the effective implementation of the California Bay-Delta Program. The state and federal agencies participating in the program include all of the following: the Resources Agency, Department of Water Resources, Department of Fish and Game, Department of Food and Agriculture, California Environmental Protection Agency, State Water Resources Control Board, State Department of Health Services, United States Department of the Interior, United States Department of

Agriculture, United States Bureau of Reclamation, United States Fish and Wildlife Service, United States Geological Survey, United States Bureau of Land Management, United States National Marine Fisheries Service, United States Environmental Protection Agency, United States Army Corp of Engineers, United States Natural Resources Conservation Service, United States Forest Service, and Western Area Power Administration.

(g) The agencies participating in the California Bay-Delta Program have prepared a 30-year plan to coordinate existing programs and direct new programs to improve the quality and reliability of the state's water supplies and to restore the ecological health of the bay-delta watershed.

(h) To ensure efficiency, transparency, and accountability in decision making, the implementation of the California Bay-Delta Program requires the establishment of an authority. The authority is intended to accomplish all of the following:

(1) Provide accountability to the Legislature, Congress, and interested parties for the program's performance.

(2) Promote the implementation of the program in a balanced manner.

(3) Provide consistent monitoring, assessment, and reporting of the agencies' individual and cumulative actions.

(4) Provide the use of sound, consistent science across all program elements.

(5) Coordinate existing and new government programs to meet common goals, avoid conflicts, and eliminate redundancy and waste.

(6) Oversee coordinated implementation of the California Bay-Delta Program in a manner that is consistent with the mission statement, goals, and objectives of the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

(7) Promote the development and implementation of regional programs to advance the program elements.

(i) The successful implementation of the California Bay-Delta Program will require the full cooperation and participation of many federal agencies. The

Legislature, in adding this division, expects the subsequent enactment of federal legislation authorizing the full participation of federal agencies in the authority established and activities prescribed by this division. Until that federal legislation is enacted, federal agencies are invited to participate in the authority and its activities, as described in this division, to the extent possible under existing federal agency authorizations.

Article 2. Definitions

79402. Unless the context otherwise requires, the following definitions set forth in this section govern the construction of this division:

(a) “Authority” means the California Bay-Delta Authority.

(b) “Balance” or “balanced implementation” means the implementation of projects, programs, or other actions in a manner that meets both of the following requirements:

(1) Is consistent with the implementation schedule and milestones described in the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

(2) Results in concurrent improvement in all program elements in a manner that ensures that improvements in some program elements are not made without corresponding improvements in other program elements.

(c) “Bay-delta” means the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

(d) “Bay-Delta Public Advisory Committee” means the Bay-Delta Public Advisory Committee established by charter issued by the United States Department of Interior, dated June 8, 2001, and filed on July 2, 2002.

(e) “California Bay-Delta Program” or “Bay-Delta Program” means those projects, programs, commitments, and other actions that address the goals and objectives of the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

(f) “Category A programs” means those state and federal agency programs and funds that are to be managed and implemented consistent with the California Bay-Delta Program’s goals and objectives.

(g) “Director” means the Director of the California Bay-Delta Authority.

(h) “Implementing agencies” means those agencies with the primary responsibility for implementing the program elements, subject to Sections 79440 and 79441.

(i) “Program elements” means the following 11 program elements of the California Bay-Delta Program:

(1) Levee system integrity.

(2) Water quality.

(3) Water supply reliability.

(4) Ecosystem restoration.

(5) Water use efficiency.

(6) Water transfer.

(7) Watershed.

(8) Storage.

(9) Conveyance.

(10) Science.

(11) Environmental water account.

(j) “Projects” means both programs and capital projects.

Article 3. General Provisions

79403.5. (a) The authority and the implementing agencies shall carry out the programs, projects, and activities necessary to implement the Bay-Delta Program in accordance with Section 79441. The authority shall coordinate the activities of the implementing agencies to promote balanced implementation that meets the goals and objectives of the Bay-Delta Program.

(b) State agencies, whenever feasible, shall carry out their authority and

responsibilities in a manner that is consistent with the goals of the Bay-Delta Program to promote cooperative and coordinated actions and programs that result in balanced solutions to bay-delta problems.

(c) Nothing in this division shall be construed to restrict or override constitutional, statutory, regulatory, or adjudicatory authority or public trust responsibilities of any federally recognized Indian tribe, or any local, state, or federal agency, or to restrict or override authority or responsibility of state, federal, or local water project operations under applicable law and contracts. This division does not abrogate or modify state laws with respect to responsibilities to the State Water Project bondholders and shall be implemented in a manner consistent with Sections 10505 and 10505.5, Article 3 (commencing with Section 11460) of Chapter 3 of Part 3 of Division 6, and Chapter 1 (commencing with Section 12200) of Part 4.5 of Division 6.

79404. This division shall be carried out in a manner consistent with respective state and federal agency budget development, review, and approval processes.

79405. The authority is an agency of the state. Nothing in this division shall be construed to waive the state's immunity to suit in federal court under the Eleventh Amendment to the United States Constitution. A federal representative on the authority may participate to the extent allowed by federal law and may decline to participate in any matter with regard to which constitutional concerns arise, as determined by that representative.

79406. State agencies, including the authority, shall work with federal agencies and the Congress of the United States to obtain, as soon as reasonably feasible, the necessary federal approvals, including federal legislation, that will enable the federal agencies to participate with the state in the governance of the Bay-Delta Program pursuant to this division.

79407. (a) Nothing in this division may be construed as a certification of any of the following:

(1) The CALFED Bay-Delta Program final programmatic environmental impact statement/environmental impact report dated July 21, 2000.

(2) The CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

(3) The Framework Agreement, dated June 9, 2000.

(b) Nothing in this division affects the rights of litigants, or the merits of any pending lawsuit relating to the CALFED Bay-Delta Program.

CHAPTER 2. CALIFORNIA BAY-DELTA AUTHORITY

Article 1. California Bay-Delta Authority

79410. There is hereby established in the Resources Agency the California Bay-Delta Authority.

79412. (a) The authority shall include representatives from six state agencies and six federal agencies if those identified federal agencies are authorized to participate, seven public members, one member of the Bay-Delta Public Advisory Committee, and four nonvoting ex officio members, as follows:

(1) The Secretary of the Resources Agency.

(2) The Secretary of the California Environmental Protection Agency.

(3) The Director of Water Resources.

(4) The Director of Fish and Game.

(5) The State Director of Health Services.

(6) The Secretary of the Department of Food and Agriculture.

(7) The Secretary of the Interior.

(8) The Regional Administrator of Region IX of the United States Environmental Protection Agency.

(9) The Operations Manager of the California/Nevada Operations Office of the United States Fish and Wildlife Service.

(10) The Regional Director of the United States Mid-Pacific Region of the Bureau of Reclamation.

(11) The District Engineer of the United States Sacramento District of the Army Corp of Engineers.

(12) The Regional Administrator of the Southwest Region of the United States National Marine Fisheries Service.

(13) One public member from the Sacramento and San Joaquin River Delta Region.

(14) One public member from the San Francisco Bay Region.

(15) One public member from the Sacramento Valley Region.

(16) One public member from the San Joaquin Valley Region.

(17) One public member from the Southern California Region.

(18) One member of the Bay-Delta Public Advisory Committee.

(19) Two at-large members.

(20) The Chairperson and Vice Chairperson of the Assembly Water Parks and Wildlife Committee, or its successor, as a nonvoting, ex officio member.

(21) The Chairperson and Vice Chairperson of the Senate Agriculture and Water Resources Committee, or its successor, as a nonvoting, ex officio member.

(b) The five public members subject to regional requirements shall be appointed by the Governor, in consultation with the Secretary of the Interior if appropriate federal authorizing legislation has not been enacted, or with the concurrence of the Secretary of the Interior if appropriate federal authorizing legislation has been enacted, and with the advice and consent of the Senate.

(c) One at-large public member shall be appointed by the President Pro Tempore of the Senate in consultation with the Secretary of the Interior.

(d) One at-large public member shall be appointed by the Speaker of the Assembly in consultation with the Secretary of the Interior.

(e) (1) For the purposes of being eligible to serve on the board, a public

member described in any of the paragraphs (13) to (17), inclusive, of subdivision (a) shall be required to live in the region he or she represents.

(2) A public member shall have substantial training, expertise, and knowledge as follows:

(A) With regard to at least one of the following areas: ecosystem restoration, levees, water supply, or water quality.

(B) With regard to labor, Native American matters, local government, the environment, or business if that public member meets the requirements of subparagraph (A).

(f) The public members, as a group, shall reflect a broad range of the experience and knowledge described in subdivision (e).

(g) The representative of the Bay-Delta Public Advisory Committee shall be selected by a majority vote of all the members of that committee.

(h) A member of the authority described in any of the paragraphs (1) to (12), inclusive, of subdivision (a) may designate, in writing, a deputy director of that member's agency, or a person occupying an equivalent classification, to act in the place of that member if that member is absent.

(i) The federal representatives described in paragraphs (7) to (12), inclusive, of subdivision (a) may participate as nonvoting members until federal authorizing legislation is enacted and upon the enactment of that legislation, shall become voting members.

79413. Federal participation in the authority is intended to promote coordination and provide advice from federal agencies and thereby assist the state and federal agencies to more effectively meet their common goals and obligations. Nothing in this division extends the application of federal law, including the National Environmental Policy Act, to actions by state agencies, or extends the application of state law, including the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), to actions by federal agencies.

79414. The authority is subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

79415. (a) Except as provided in subdivision (b), a public member of the authority shall hold office for a term of four years, and until a successor is appointed.

(b) In the case of the public members initially appointed by the Governor, two members shall be appointed to serve until January 1, 2004, and three members until January 1, 2006.

(c) The Governor, in consultation with the Secretary of the Interior, shall appoint one of the authority members as a chairperson who shall preside at all meetings, and a vice-chairperson who shall preside in the absence of the chairperson.

(d) For the purposes of conducting the authority's business, a quorum of eleven voting members of the authority shall be present, which shall include at least three public members. All actions approved by the authority shall require an affirmative vote of a majority of the authority members eligible to vote.

(e) The authority may form committees, and the committees may make recommendations to the full authority.

(f) Each public member of the authority shall receive compensation in the amount of one hundred dollars (\$100) per day, not to exceed eight hundred dollars (\$800) per month, for conducting any authority business authorized by the authority, upon the approval of the compensation by a majority of the authority members by a recorded vote. A public member may also receive reimbursement for the necessary expenses incurred by the member in the performance of the member's duties.

Article 2. Powers and Duties

79420. (a) The authority may exercise all of the following powers:

- (1) Sue or be sued.
- (2) Delegate administrative functions to the staff of the authority.
- (3) Request reports from state, federal, and local government agencies on issues related to the implementation of the California Bay-Delta Program.
- (4) Receive funds, including funds from private and local government sources, and contributions from public and private sources, as well as state and federal appropriations.
- (5) Enter into contracts consistent with existing contracting practices of the Department of General Services.
- (6) Disburse funds through grants, public assistance, loans, and contracts to entities, including federally recognized Indian tribes, within the Bay-Delta Program regions, as described in subdivision (e) of Section 79401, to carry out the Bay-Delta Program goals and objectives.
- (7) Employ the services of other public, nonprofit, or private entities.
- (8) Employ its own legal staff or contract with other state or federal agencies for legal services, or both. The authority may employ special legal counsel with the approval of the Attorney General.
- (9) Adopt regulations as needed for the implementation of this division. A federal representative may decline to participate in actions described in this subdivision if he or she identifies a constitutional or statutory limitation on that participation. The authority granted by this subdivision does not extend to the adoption of regulations to implement the program elements described in subdivisions (a) to (f), inclusive, and subdivision (h) of Section 79441.
- (10) Obtain and hold regulatory permits and prepare environmental documents.
- (11) Pursuant to Section 78684.8, the authority is hereby designated the successor to the Secretary of the Resources Agency for the purpose of carrying

out the balancing and related procedures established pursuant to Section 78684.12.

(This section amended by AB 2683 (Canciamilla), Chapter 955, September 26, 2002)

79421. The authority shall carry out the following duties:

(a) Develop policies and make decisions at program milestones, and provide direction to achieve balanced implementation, integration, and continuous improvement in all program elements.

(b) Track the progress of all program projects and activities and assess overall achievement of the goals and objectives of the California Bay-Delta Program.

(c) Modify, as needed, the California Bay-Delta Program's timelines and activities where the authority deems it necessary to ensure that the program meets its overall goals and objectives. Modification shall be coordinated with implementing agencies and other affected agencies with public input. The authority shall notify the appropriate policy and fiscal committees of the Legislature with regard to any modifications made by the authority.

(d) Communicate with the Congress of the United States and the Legislature on program progress, answer legislative inquiries, review and respond to legislative proposals, and review and submit legislative proposals.

(e) On or before November 15 of each year, review progress in implementing the program.

(f) On or before December 15 of each year, submit a report to the Governor, the Secretary of the Interior, the Legislature, and the Congress of the United States that describes the status of implementation of all program elements for the prior fiscal year.

(g) If, at the conclusion of each annual review submitted pursuant to subdivision (f), or, if a timely annual review has not been issued, the authority or the Governor, or the Secretary of the Interior, if federal authorizing legislation has been enacted, determines, in writing, that either the program schedule or

objective has not been substantially adhered to, the authority, in coordination with the Bay-Delta Public Advisory Committee, the Governor shall, and the Secretary of the Interior may, prepare a revised schedule that will achieve balanced progress in all program elements consistent with the intent of the California Bay-Delta Program and applicable regulatory requirements.

(h) To support annual implementation, the director shall prepare and submit to the Department of Finance an annual state proposed budget, prepared consistent with Section 79423, for each of the program elements and the authority's oversight and coordination duties, in accordance with the annual State Budget process.

(i) Coordinate with federal agencies to develop a proposed federal budget to support the California Bay-Delta Program that the federal agencies can submit to the President of the United States in accordance with the annual federal budget process.

(j) Manage the science program element.

(k) Coordinate, and when appropriate, assist with the integration of, the Bay-Delta Program with other related programs to maximize available resources and reduce conflicts and inconsistencies with other programs.

(l) Provide a forum for the resolution of conflicts or disputes among implementing agencies relating to the program.

(m) Seek out and promote partnerships with local interests and programs that seek to integrate various water management options, and cooperate and undertake joint activities with other persons, including local entities, Indian tribes, water users, and landowners.

These activities shall include, but are not limited to, planning, design, technical assistance, construction projects, and development of an independent science program.

(n) Develop, in cooperation with federal agencies, a regulatory coordination and streamlining process for the issuance of permits and approvals required under state and federal law as necessary, to achieve the program's goals and objectives that reduces or eliminates duplicative process.

(o) Adopt criteria for review, approval, and modification of annual program plans and projected expenditures pursuant to subdivision (i) of Section 79423. The criteria shall be consistent with existing state and federal agency budget development, review, and approval processes. The authority shall submit a copy of the criteria to the appropriate policy and fiscal committees of the Legislature.

(p) Meet jointly with the Bay-Delta Public Advisory Committee at least once annually.

79422. By December 15, 2003, develop a pilot program in coordination with the Department of Personnel Administration, the State Personnel Board, the Department of General Services, and the Department of Finance to develop and implement actions that are intended to increase the administrative efficiency of the authority, including, but not limited to, budgeting, contracting, purchasing, and personnel management. The authority shall submit a report summarizing the implementation of this section to the appropriate policy and fiscal committees of the Legislature not later than 120 days after the authority commences the implementation of the pilot program.

79423. (a) The implementing agencies shall annually submit to the director their annual program plan and proposed budget for the following budget year describing how each implementing agency proposes to implement their respective program elements during the following budget year. The director shall then submit a comprehensive budget proposal to the Secretary of the Resources Agency for consideration consistent with the existing budget development process. Individual departmental budget requests are exempt from the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code). These programs shall also address environmental justice concerns and assess the impacts of projects and activities on tribal trust resources and tribal governmental concerns.

(b) Each annual program plan and proposed budget shall include programs that are designated as Category A programs in Attachment 3, entitled “Implementation Memorandum of Understanding” of the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

(c) Annually, the authority shall consult with the agencies identified in subdivision (f) of Section 79401 and the Bay-Delta Public Advisory Committee, and shall determine, with the concurrence of the implementing agencies, those changes that shall be made to the list of Category A programs.

(d) Each annual program plan and proposed budget shall include program priorities, work plans, proposed budgets, and significant program products, including, but not limited to, regulations, grant or loan solicitations, schedules for production of environmental documents, and project selection processes.

(e) Annual program plans and proposed budgets also shall include a strategy and proposed budget for addressing program-specific, critical scientific uncertainties, developing and implementing performance measures, evaluating program actions, developing strategies for incorporating tribal and environmental justice interests, and conducting scientific review of program implementation and proposed projects. The implementing agency and the director shall consult with the lead scientist, as appropriate, to determine an appropriate science strategy and proposed budget.

(f) The implementing agencies shall develop comprehensive tribal and environmental justice work plans, including specific goals and objectives and projected expenditures that address all program areas.

(g) The implementing agencies shall coordinate the preparation of annual program plans and proposed budgets with agencies participating in the California Bay-Delta Program, federally recognized Indian tribes, and other appropriate agencies.

(h) The implementing agencies and the director shall seek to integrate the annual plans and proposed budgets for the program elements into a comprehensive and balanced annual implementation plan.

(i) Annually, the authority shall review and approve, and, as appropriate, may recommend that implementing agencies modify, multiyear program plans and long-term expenditure plans on behalf of Category A programs, based on the following criteria:

(1) Consistency with the program.

(2) The balanced achievement of the program's goals and objectives.

(j) If the authority does not approve an implementing agency's multiyear program plan and long-term expenditure plan, the authority shall prepare and submit written findings to the appropriate policy and fiscal committees of the Legislature and the implementing agencies, describing how the multiyear program plan and long-term expenditure plan do not meet the criteria adopted by the authority pursuant to subdivision (o) of Section 79421.

(k) If the authority recommends modification to implementation of the Budget Act for the current fiscal year or the multiyear program plan and long-term expenditure plan, the implementing agency shall resubmit the Budget Act implementation plan, the multi-year plan, or the long-term expenditure plan, as appropriate, to the authority for approval. If an implementing agency makes any of the modifications recommended by the authority, the authority shall submit these modifications to the Legislature.

(l) Nothing in this division limits or interferes with the final decisionmaking authority of the implementing agencies.

(This section amended by AB 2683 (Canciamilla), Chapter 955, September 26, 2002)

Article 3. Limitations on Powers and Duties

79430. The authority shall comply with all applicable state and federal laws, including state water laws.

79431. The authority may not levy taxes, user fees, or assessments without explicit legislative approval.

79432. The authority shall exercise its powers consistent with the California Environmental Quality Act (Division 13 commencing with Section 21000) of the Public Resources Code). Nothing in this division prevents the modification or supplementation of the CALFED Final Programmatic Environmental Impact Statement/Environmental Impact Report, certified by the Secretary of Resources August 28, 2000, or defines the manner in which that document may be used.

79440. For the purposes of this division, “implementing agency” includes those state agencies identified in Section 79441 until the United States, by statute or otherwise, has authorized the identified federal agencies to participate in the governance and implementation of the Bay-Delta Program in the manner set forth in this division. Until that federal authorization has been provided, the state implementing agencies shall consult, cooperate, and coordinate with federal agencies in all matters related to implementation of the program.

79441. (a) The department, the Department of Fish and Game, and the United States Army Corps of Engineers are the implementing agencies for the levee program element.

(b) The state board, the United States Environmental Protection Agency, and the State Department of Health Services are the implementing agencies for the water quality program element.

(c) The Department of Fish and Game, the United States Fish and Wildlife Service, and the United States National Marine Fisheries Service are the implementing agencies for the ecosystem restoration program element. If interests in land, water, or other real property are acquired, those interests shall be acquired from willing sellers by means of entering into voluntary agreements.

(d) The department and the United States Bureau of Reclamation are the implementing agencies for the water supply reliability, storage, and conveyance elements of the program.

(e) The department, the state board, and the United States Bureau of

Reclamation are the implementing agencies for the water use efficiency and water transfer program elements.

(f) The Resources Agency, the state board, the department, the Department of Fish and Game, the United States Natural Resources Conservation Service, the United States Environmental Protection Agency, and the United States Fish and Wildlife Service are the implementing agencies for the watershed program element.

(g) The authority is the implementing agency for the science program element.

(h) The department, the Department of Fish and Game, the United States Bureau of Reclamation, the United States Fish and Wildlife Service, and the United States National Marine Fisheries Service are the implementing agencies for the environmental water account program element.

Article 4. Staff

79450. The Governor, in consultation with the Secretary of the Interior, shall appoint a director who shall serve at the pleasure of the authority.

79451. The director shall administer the affairs of the authority as directed by the authority and shall direct the staff of the authority. The annual salary of the director shall be as provided by Section 11552 of the Government Code.

79452. (a) The authority, with the advice of the director, shall appoint a lead scientist. The lead scientist shall report to the authority. The lead scientist, in cooperation with the implementing agencies, shall be responsible for the development of the science program element.

(b) The lead scientist shall meet the following requirements:

(1) Has undertaken substantial scientific research work in any field related to one or more of the program elements.

(2) Has experience managing environmental issues or advising high-level

managers in methods for promoting science-based decisionmaking in the areas of water management and ecosystem restoration.

(3) Has a record of publication in peer reviewed scientific literature.

(c) For all program elements, the lead scientist shall ensure scientific application of adaptive management, monitoring, and investigations to reduce uncertainties, and full investigation of the effects of each program element on other program elements.

(d) The lead scientist shall ensure that peer review is employed extensively and prudently to ensure the quality of program planning, implementation, and evaluation.

(e) The purpose of the science program element shall be to carry out all of the following functions:

(1) Provide implementing agencies and the authority with authoritative and unbiased reviews of the state of scientific knowledge relevant to management and decisionmaking for the California Bay-Delta Program.

(2) Implement programs and projects to articulate, test, refine, and improve the scientific understanding of all aspects of the bay-delta and its watershed areas.

(3) Provide a comprehensive framework to integrate, monitor, and evaluate the use of adaptive management and the best available scientific understandings and practices for implementing the California Bay-Delta Program.

(4) Independently review the technical and scientific performance of the California Bay-Delta Program, including, but not limited to, all of the following:

(A) Conclusions.

(B) Studies, monitoring, performance measures.

(C) Data analyses.

(D) Scientific practices that form the scientific bases for program decisionmaking.

79453. The director may appoint and hire staff as necessary to administer the affairs of the authority.

(This section amended by AB 2683 (Canciamilla), Chapter 955, September 26, 2002)

79454. The director shall organize authority staff in a manner best suited to administer the affairs of the authority and oversee a complex multiagency program.

79455. Notwithstanding any other provision of law, and only for the purposes of this division, the authority may hire members of federally recognized Indian tribes and nonprofit organizations in accordance with the inter-jurisdictional employee exchange program described in Section 427 of Title 2 of the California Code of Regulations.

(This section amended by AB 2683 (Canciamilla), Chapter 955, September 26, 2002)

79456. Notwithstanding Section 19818.10 of the Government Code, and in cooperation with the State Personnel Board, and the Department of Personnel Administration, the authority shall establish personnel classifications, including a new management level classification, specific to the authority's unique role in oversight and coordination.

Article 5. Advisory Committee

79460. (a) The authority shall provide administrative support for the Bay-Delta Public Advisory Committee.

(b) The authority shall take any administrative actions necessary to maintain the Bay-Delta Public Advisory Committee's status as an advisory committee under the Federal Advisory Committee Act (Public Law 92-463, as amended).

(c) The authority shall provide assistance to the Governor and Secretary of the Interior to ensure that the candidates for appointment to the Bay-Delta Public

Delta Public Advisory Committee are representatives of federally recognized Indian tribes or “stakeholder” groups, reflect a geographic diversity and diversity of interests affected by the health of the bay-delta, and have expertise in the relevant fields as specified in the committee’s federal charter. Appointment shall be made to ensure that the committee as a whole is both balanced and diverse.

(d) The Bay-Delta Public Advisory Committee shall advise and make recommendations to the authority and director on issues related to the California Bay-Delta Program and any of the processes, projects, or programs required by this division.

(e) The members of the Bay-Delta Public Advisory Committee may receive reimbursement for necessary travel expenses incurred by the members in the performance of the members’ duties, consistent with state per diem rates.

Article 6. Independent Science Board

79470. (a) The lead scientist shall nominate, and the authority shall establish, a board of independent scientists, to be known as the Independent Science Board, that shall advise and make recommendations to the authority and the Bay-Delta Public Advisory Committee, as appropriate, on the science relative to implementation of all program elements.

(b) The authority may recognize an existing board of independent scientists as members of the board required by this section.

(c) The authority shall respond in writing to the advice and reviews prepared by the Independent Science Board.

79471. The lead scientist may establish, consistent with subdivision (c) of Section 79403.5 and in cooperation with the implementing agencies, additional independent science panels to assist the implementing agencies and the authority by reviewing and providing advice on scientific issues associated with individual program elements, reviewing multiple program actions within

scientific geographic areas, and defining the state of knowledge relative to specific scientific issues. Members of additional independent science panels may also be members of the Independent Science Board.

CHAPTER 3. SUNSET

79475. This division shall remain in effect only until January 1, 2006, and as of that date is repealed, unless the Secretary of the Resources Agency determines that federal legislation has been enacted authorizing the participation of appropriate federal agencies in the authority. Upon making that determination, the Secretary of the Resources Agency shall notify, in writing, the Secretary of State with regard to that determination.

79476. Notwithstanding any other provision of law, the authority may not undertake any activities pursuant to this division if the authority fails to submit the annual report described in subdivision (f) of Section 79421 on or before March 15 of the year following the year in which the report was required to be submitted.

