



**California State Legislature**

# **THE 2009 DELTA & WATER LEGISLATION**

## **Legislative History**

**ASSEMBLY COMMITTEE ON  
WATER, PARKS AND WILDLIFE**

**JARED HUFFMAN  
CHAIR**

# **Legislative History of 2009 Delta/Water Legislation**

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- I) The 2009 Legislative Process for Delta/Water Legislation
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## California State Legislature

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- I. The 2009 Legislative Process for Delta/Water Legislation
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Hearing – SB 68 (Steinberg)
  - F. Big Five Discussions
  - G. Final Resolution/Outcome

**SENATE COMMITTEE ON NATURAL RESOURCES AND WATER**

**DARRELL STEINBERG, CHAIR**

**AGENDA**

**Tuesday, March 11, 2008**

**9:30 a.m. ~ Room 112**

**Informational Hearing**

**SUBJECT: Governor's Proposed Actions For A Comprehensive Solution In The Delta**

1. Opening Comments
2. Governor's Proposed Actions For A Comprehensive Solution In The Delta
  - Lester Snow, Department of Water Resources
3. Initial Assessment of Financial Impact
  - Catherine Freeman, Legislative Analyst Office
4. Stakeholder Response
  - Timothy Quinn, Association of California Water Agencies
  - Thomas Zuckerman, Central Delta Water Agency
  - Roger Patterson, Metropolitan Water District of Southern California
  - Barry Nelson, Natural Resources Defense Council
  - Jonas Minton, Planning and Conservation League
  - Erin Field, Western Growers
  - Thomas Birmingham, Westlands Water District
5. Public Comment

**INFORMATIONAL HEARING**  
**SACRAMENTO ~ SAN JOAQUIN DELTA**  
**Implementing the Delta Vision**

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**Tuesday, February 24, 2009**  
**State Capitol, Room 437**  
**2:00 p.m.**

**A G E N D A**

- I. OPENING COMMENTS**
- II. INTRODUCTION TO THE DELTA**
  - Professor Jay Lund, UC Davis Center for Watershed Sciences
  - Alf W. Brandt, Assembly Water, Parks and Wildlife Committee
- III. DELTA VISION BLUE RIBBON TASK FORCE STRATEGIC PLAN**
  - Phil Isenberg, Chair, Governor's Delta Blue Ribbon Task Force
  - Richard Frank, Member, Governor's Delta Blue Ribbon Task Force  
UC Berkeley – Center for Environmental Law & Policy
- IV. LAO PRESENTATION: THE DELTA VISION: FINANCING ISSUES**
  - Mark Newton, Director of Resources and Environmental Protection  
Section, Legislative Analyst's Office
- V. ADMINISTRATION PERSPECTIVE ON IMPLEMENTATION OF DELTA VISION**
  - Joe Grindstaff, Deputy Secretary for Water Policy, California Natural  
Resources Agency
- VI. PUBLIC COMMENT**

*\* Testimony may be subject to time limits \**

## **Delta Hearing – February 24, 2009**

### **Statement by Chair**

The time has arrived . . . for the Legislature to address the crisis in the Sacramento-San Joaquin Delta.

Since 2005, when Fish and Game reported to this Committee on the steep decline in both the Delta fishery and the food web on which it depends, we have been taking steps to consider how to respond to this Delta ecosystem crisis. We passed legislation on Delta funding, levees, and emergency preparation. Important to today's hearing, we passed a bill requiring the Administration to recommend a strategic, long-term vision for the Delta, by the beginning of this year.

The Administration created a Blue-Ribbon Task Force led by former Assemblyman Phil Isenberg and offered its recommendations, based largely on the Task Force's work. That's why we're here today – to get started on actually implementing the Delta Vision.

We face many decisions in this session, regarding how to proceed in the Delta – ecosystem restoration, water conveyance, water quality levees, land use, governance, and statewide water management. But, to make those decisions, we need to start with the information that we need to make those decisions – not today but likely in this legislative session.

If we have learned anything from the CALFED Bay-Delta Program, it is that simply protecting the status quo in the Delta is not sustainable. There is no status quo in the Delta. It's a living and changing environment, as it has been for thousands of years. Created by sediment from California's two great rivers, flowing and changing the course and quality of the Delta, this precious ecological and economic resource continues that course of change. Farmers have plowed the fertile Delta peat, leading to subsidence, of as much as 30 feet below the water level. Our State created water projects to take water from north to south, through the Delta. Now climate change is raising sea-levels and changing the nature of the Delta's hydrology. We cannot afford to simply stand by, while the future of the Delta darkens.

The time has arrived . . . for us to set a new course for the Delta, to prepare for the changes that are coming at us whether we like it or not. We need to help the Delta be resilient to those changes, making the Delta a healthy ecosystem and California water-dependent economy a healthy creator of jobs.

And, so . . . the time has arrived for us to hear an introduction to the Delta, the Blue Ribbon Task Force's Strategic Plan, and the Cabinet Committee's recommendations for how to proceed with implementing the Delta Vision.

**INTRODUCTION TO THE DELTA:** First we will hear from Professor Jay Lund from UC Davis. In recent years, he has served on an interdisciplinary University of California team, funded and led by the Public Policy Institute of California (PPIC), to focus our State's academic resources on the current Delta crisis. Professor Lund is the engineering member of that Delta team. He's going to give us an introduction to the Delta and its challenges, so that we all can start on the same page with a strong foundation of information.

Our in-house Committee consultant and Delta expert, Alf Brandt, will follow Professor Lund with information as to history of Delta law and policy.



*DELTA VISION & THE BAY-DELTA CONSERVATION PLAN:  
Current Status & Next Steps*

**9:00 a.m. to 12:00 a.m.  
Tuesday, February 24, 2009  
Room 112**

**9:00 a.m. Opening Remarks**

**9:10 a.m. Update on Delta Vision and the Bay-Delta Conservation Plan (BDCP)**

Joe Grindstaff, Deputy Secretary for Water Policy, Natural Resources  
Agency

Karen Scarborough, Undersecretary, Natural Resources Agency

**10:00 a.m. Response Panel**

Phil Isenberg, Chair, Delta Vision Blue Ribbon Task Force

Ellen Hanak, Public Policy Institute of California

Catherine Freeman, Senior Fiscal & Policy Analyst, Legislative Analyst  
Office

**10:50 a.m. Additional Perspectives**

Roger Patterson, Asst. General Manager of Strategic Water Initiatives,  
Metropolitan Water District of Southern California

Jason Peltier, Chief Deputy General Manager, Westlands Water District

Tom Zuckerman, Central Delta Water Agency

Barry Nelson, Western Water Project Director, Natural Resources Defense  
Council

Thad Bettner, General Manager, Glenn-Colusa Irrigation District

**11:40 a.m. Public Comments**

**12:00 p.m. Adjourn**

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California Legislature  
**Senate Committee**  
on  
**Natural Resources and Water**  
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May 26, 2009

President Pro Tempore, Darrell Steinberg  
State Capitol Room 205  
Sacramento, CA 95814

Speaker of the Assembly, Karen Bass  
State Capitol Room 219  
Sacramento, CA 95814

Pro Tem Steinberg and Speaker Bass:

Last March, you asked Assemblymember Huffman and I to co-chair two bipartisan bicameral working groups to address problems with the Delta. Assemblymember Huffman took the lead for the working group addressing the Delta plan; I took the lead for the working group addressing Delta Governance. This is my report on the results of the Delta Governance Working Group.

The purpose of this working group was to recommend a proposed governance structure – not to make decisions on canals, conveyances or dams. The Delta Governance Working Group met over eight Wednesday afternoons. Regular participants included Senators Cogdill, Simitian, Wolk, and me, and Assemblymembers Arambula, Huffman, and Salas. Other members attending one or more meeting were Senator Dutton and Assemblymembers Buchanan, Fuller, and Nielson.

I structured each of our meetings as follows. Each meeting had a theme. First, I would recap the previous meeting and describe the current meeting's agenda. For each of the first six meetings, we invited a guest speaker to share their insights into some aspect of the day's theme. The speaker would typically give a short presentation, followed by questions of the working group members. After the speaker, we would often have an oral report from one of the working group members on some study or report they had

volunteered to read. Then, we would move on to a more in depth discussion of the day's theme.

The themes and speakers for each of the eight meetings were:

Week 1

Theme: What are Governance & Stewardship?

Speaker: James Mayer, Former Executive Director of Little Hoover Commission  
*What Lessons Are To Be Learned From CalFed?*

Week 2

Theme: What Governance Functions Do We Need To Incorporate Into Our Plan?

Speaker: Karen Scarborough, Undersecretary, Natural Resources Agency  
*Status of Bay Delta Conservation Plan (BDCP) Governance Discussions*

Week 3

Theme: Delta Protection Commission & Straw Proposal #1

Speaker: Former State Senator Patrick Johnston  
*Delta Protection Commission, History and Outlook*

Week 4

Theme: Federal Government Participation & Straw Proposal #2

Speaker: Betsy Rieke, Former Assistant Secretary of the Interior for Water and Science  
*Role of the Federal Government in the Delta*

Week 5

Theme: Governance Issues of SWP, CVP, & Conveyance & Straw Proposal #3

Speaker: Lester Snow, Director of DWR  
*Governance Issues of SWP, CVP, & Conveyance*

Week 6

Theme: Funding the Delta Plan & Straw Proposal #4

Speaker: Dean Misczynski, Former Director of the California Research Bureau  
*Governance Issues with Beneficiaries Pay*

Week 7

Theme: Review of Governance Proposals & Initial Guiding Principles

Speakers: Sen. Wolk – Straw Proposal #1  
Sen. Simitan – Straw Proposal #2 (presented by Alan Gordon)  
Sen. Cogdill – Straw Proposal #3 (presented by Erin Guerrero)  
Sen. Pavley – Straw Proposal #4

Week 8

Theme: Guiding Principles on Governance

Speaker: None

Through the working group, a number of products were created. Staff created an extensive reading list of studies, reports, and other materials helpful to understanding the governance challenges presented by the Delta. The reading list was the basis for many of the oral reports made by members of the working group.

Senators Wolk, Simitian, Cogdill, and me each developed and presented a straw governance proposal, which are attached. While the working group did not embrace any one of the straw proposals, each provided additional insight into specific issues associated with Delta Governance. Moreover, while each proposal was different, there were remarkable similarities as well.

Most important, the working group developed a set of Delta Governance Principles. It is important to note that the governance principles reflect the opinions of those in the room when the principle was discussed. This means that the governance principles chiefly reflect the thoughts of the Senate and Assembly Democrat members of the working group. While Senator Cogdill was present for a part of the discussion on one of the two days where the governance principles were discussed in depth, no Assembly Republicans were present.

That said, the governance principles are based on the following four broad organizing principles:

1. The current governance structure for the Delta is not meeting the needs of anyone.
2. The state should establish two primary goals for the Delta, restoring the Delta ecosystem and creating a more reliable water supply for California, while recognizing the unique values of the Delta. (While there is broad support for the concept, the precise language is still being refined.)
3. There is a need to create a new governance structure.
4. The new policy and governance structure should be composed of the following elements.
  - A Delta Council or Commission
  - A Delta Plan
  - A Delta Conservancy
  - An enhanced or modified Delta Protection Commission
  - A Delta financing strategy, which could include fees, revenue bonds, and/or GO bonds

The detailed Delta Governance Principles are attached.

Finally, while not a part of our charge, there has been a great deal of discussion of what the components of a comprehensive water package might be. Director Snow, in a presentation made at our fifth meeting, suggested that a comprehensive water package would contain the following elements:

- Legislation establishing Delta Commission or Council.
- Legislation establishing Delta Conservancy.
- Legislation establishing Delta Plan.
- Legislation establishing an enforceable statewide water conservation program.
- Legislation placing a water bond on the ballot.

My opinion is that a truly comprehensive water package would contain some additional elements. Based on the findings of both the Blue Ribbon Task Force and the Delta Vision Committee, the presentation by Director Snow, and conversations with working group members and others, I believe that a comprehensive water package should also include, at a minimum:


- Legislation requiring statewide groundwater monitoring, as discussed in both the Blue Ribbon Task Force and the Delta Vision Committee reports, and
- Legislation requiring improved water rights management, water use reporting, and water rights enforcement per the Delta Vision Commission, also as discussed the Blue Ribbon Task Force and the Delta Vision Committee reports.

Personally, my recommendation for moving forward is as follows:

- Use the guiding principles as the framework for new legislation. Have committee staff, working with your staff, begin drafting the legislation. Consider asking the Governor to establish a Special Session on Delta Water Problems as a mechanism to hear the bills through a full committee process.
- Create a transitional period, with guidelines, for the new governance council or commission. Use money currently budgeted for the California Bay Delta Authority, Cal Fed program, and DWR to finance operations of the new council from January 1, 2010 to June 30, 2010. The Delta governance principles list identifies some of the actions necessary for the transition period, I would be happy to provide you with a more comprehensive list.
- Establish a Delta Conservancy through legislation.
- Adopt, through legislation, the two primary goals for the Delta, restoring the Delta ecosystem and creating a more reliable water supply for California, while recognizing the unique values of the Delta.
- Begin evaluating feasibility and desirability the conveyance utility concept to administer the ongoing operations of the Delta.
- Revised Delta Protection Commission through legislation.
- Create a Delta Zone Management Plan consistent with the federal Coastal Zone Management Act for Federal participation and consistency review.
- Establish a National Heritage area for the Delta.
- Adopt a compressive water package as described above.

Finally, I want to acknowledge the hard work and dedication of the working group members and their staff. This process would not have been nearly as productive without their willingness to constructively engage in these difficult issues.

Sincerely

A handwritten signature in cursive script that reads "Fran Pavley".

Fran Pavley, Chair  
Senate Committee on Natural Resources and Water

Cc: Senator Cogdill  
Senator Simitian  
Senator Wolk  
Senator Dutton  
Assemblymember Arambula  
Assemblymember Huffman  
Assemblymember Salas  
Assemblymember Buchanan  
Assemblymember Fuller  
Assemblymember Nielson

## **Straw Governance Proposals:**

**#1**

**Delta Stewardship Model  
Senator Wolk**

**#2**

**California Delta Ecosystem and Water Council  
Senator Simitian**

**#3**

**Delta Governance Principles  
Senator Cogdill**

**#4**

**Interim Water Council or Commission  
Senator Pavley**

Delta Science and Engineering  
Board and Program

## Delta Stewardship Council

9 members, 8 appointed by the governor and the chair of the DPC

**Goal:** The Delta ecosystem and a reliable water supply for California are the primary goals for sustainable management of the Delta, which is a unique and valued area, warranting recognition and formal legal protection by the state of California. **Note:** How does this fit with public trust?

- Responsible for adoption of Delta Stewardship Plan
  - Due on July 1 2011
  - Update plan by July 1 2017
  - First plan based on Resources Management Plan and Central Valley flood Protection Plan and other plans
  - Includes, in the first update, a consideration of water rights actions taken by the SWRCB to achieve accurate accounting of real water in the Delta.
- Hears appeals from the DPC regarding the consistency of major infrastructure projects in the Delta Plan
- Assume responsibility for any conservation plan developed for the Delta by Conservancy
- Uses adaptive management to update the Plan
- Determines consistency of the BDCP and any major infrastructure changes with the Stewardship plan, Timing?
- Funding Authority
- Storage projects that provide a net improvement in ecosystem and water quality conditions in the Delta.
- Sets Performance Goals. Annual reports to the Legislature.

### Delta Protection Commission Existing

- 5 County representatives
- 3 city representatives
- 5 reclamation districts
- 3 Public appointments by Governor
- 2 Senate and Assembly appointees (Ex officio)
- Replaces state representatives with secretaries of Resources and Cal EPA
  - Review all of its plans and proposals to be consistent with Stewardship plan
  - Review and certify all city and county general plans for consistency with Delta Stewardship plan
  - Determine Consistency of major water, road, railroad, utility and levee infrastructure projects in Delta with Delta Stewardship Plan including upfront project review. May be appealed to Council.
  - Develop specifics to meet goal #2 with a year

### SWP/ Water Master/ Water Utility New

- Day to day water management
- Transparent
- Consistent with Delta Stewardship Plan
- Who controls?

### Conservancy SB 458

- 11 voting members
- 4 non voting members
- Develop strategic plan consistent with Delta Stewardship Plan
- The Sacramento-San Joaquin Delta Conservancy will support efforts that advance both environmental protection and the economic well-being of Delta residents in a complementary manner. These efforts will include: enhancing habitat and habitat restoration; protecting agriculture and working landscapes; increasing recreation and public access; promoting tourism and economic vitality in the delta; promoting Delta legacy communities; and protecting historical and cultural resources.



## **CALIFORNIA DELTA ECOSYSTEM AND WATER COUNCIL (CDEW)**

- Independent Agency not housed within Resources or Cal-EPA
- 7 members, 5 appointed by Governor, 1 each by Speaker and Pro-tem
- 8 year terms, no reappointment
- Chair appointed by Governor (full time)
- Executive Director appointed by Council (full time)
- Council develops the plan according to parameters established by the legislature

## **DELTA SCIENCE ADVISORY PANEL**

- CDEW appoints 12-20 scientists of various backgrounds to advise the Council, the Conservancy, and the JPA

## **CALIFORNIA DELTA WATERSHED CONSERVANCY**

- 11 members including local government and community representatives
- Implement Bay Delta Conservation (BDCP) Plan, Habitat Conservation plan
- Buy water and land from willing sellers

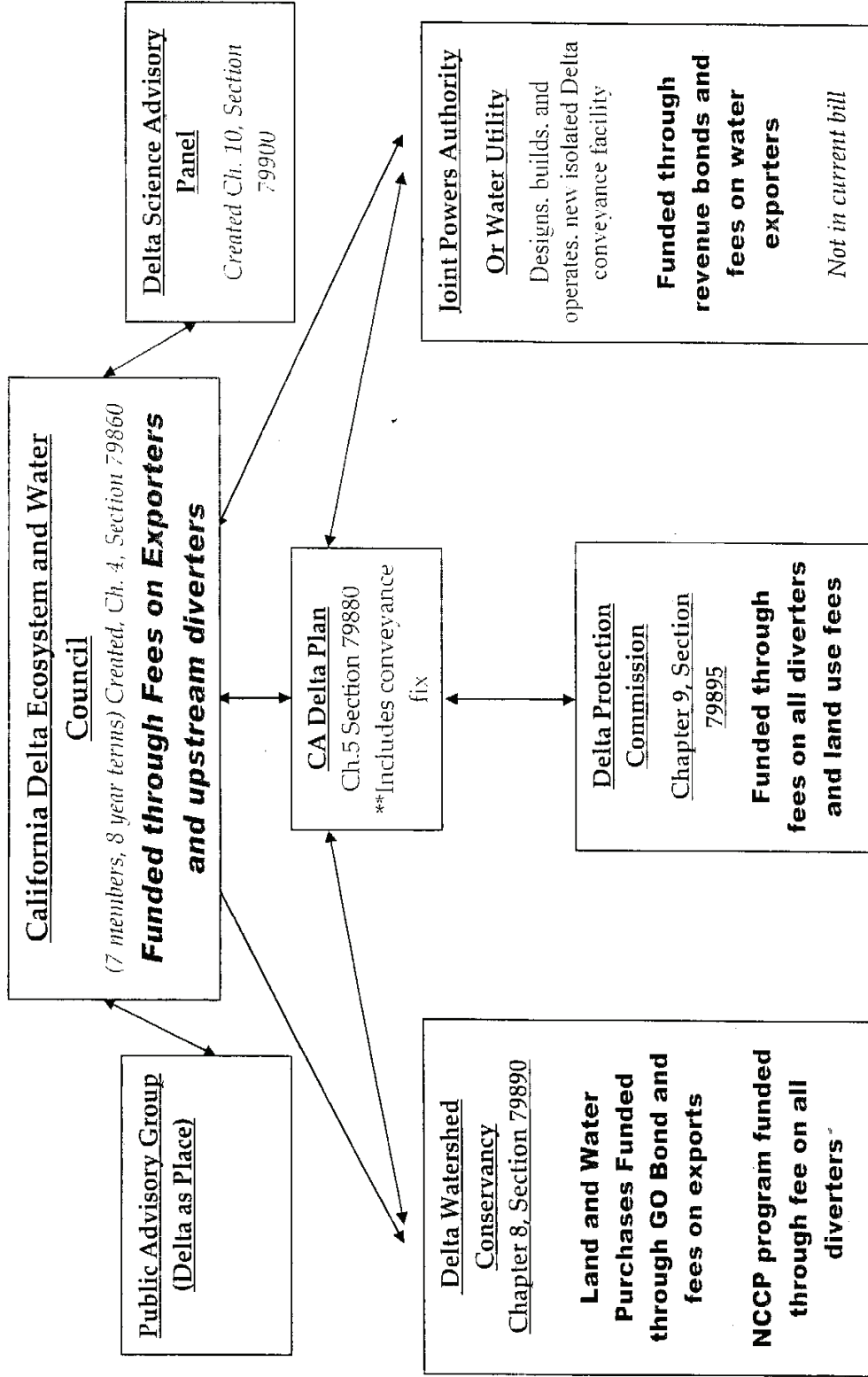
## **JOINT POWERS AUTHORITY OR WATER UTILITY**

- Members include state and federal contractors
- They are the ministerial entity that operates the pumps and hopefully dam releases (they turn the knobs)
- \*\*\*Independent Water System Operator appointed by the CDEW to implement the plan on a real time basis (still conceptual)

## **DELTA PROTECTION COMMISSION**

- Reviews local planning decisions to ensure consistency with Delta Ecosystem Plan

## **PUBLIC ADVISORY GROUP – DELTA AS PLACE**

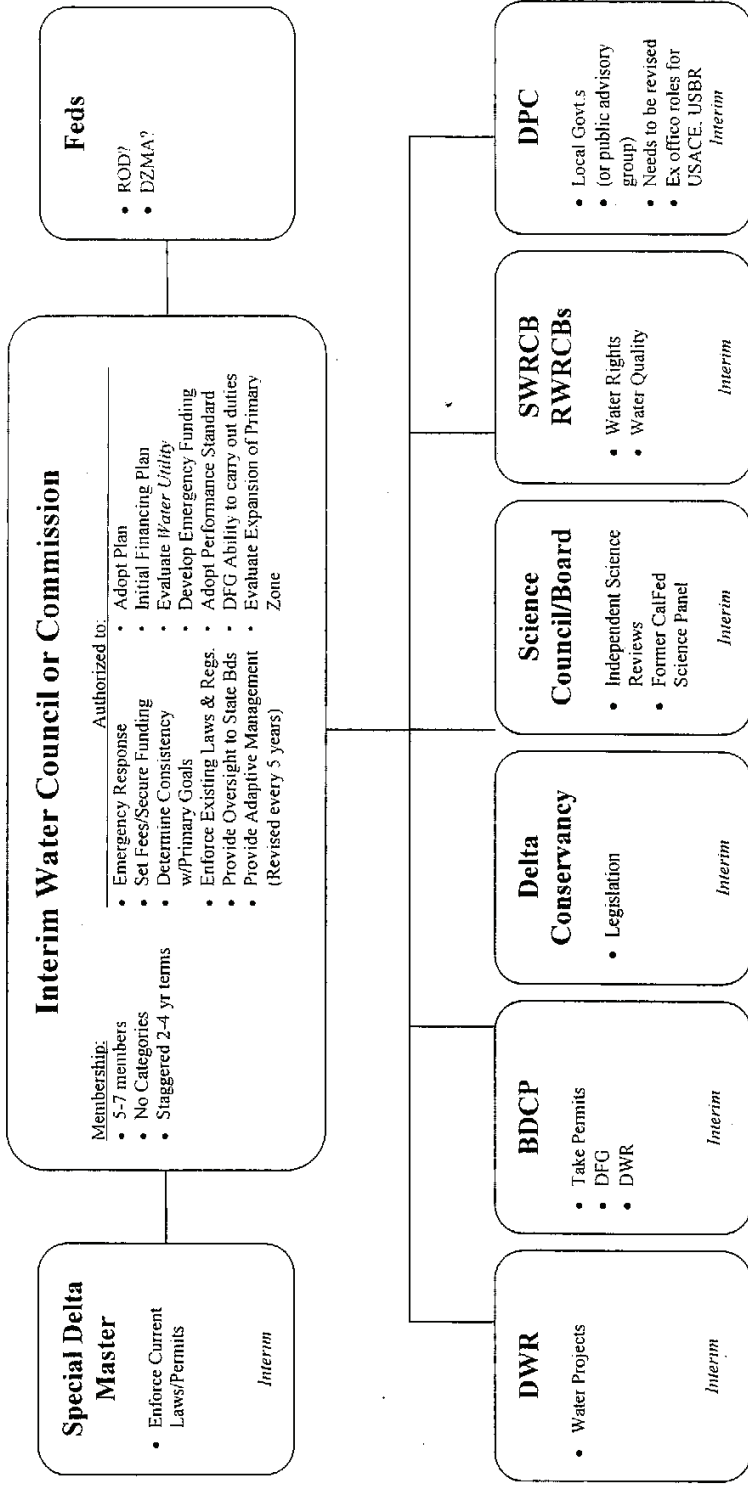


### Delta Governance Principles

- Utilize existing entities and authorities as much as possible
  - Potential New Entities
    - Delta Conservancy?
    - Establish JPA or Water Utility to implement water supply reliability actions
- Public dollars for public benefit (co-equal goal of restoring the Delta ecosystem)
  - Fees limited to those negotiated in BDCP
  - General Fund or GO bonds to support ecosystem projects
- No requirement for pre-approval for projects/actions
- Establish criteria based on significance for appeals
- Need for finality in decisions - Court challenges expedited and court of original jurisdiction should be state appellate or Supreme court
- Maintain current structure of Delta Protection Commission.
- If a conservancy is created, its authority should be limited to ecosystem restoration, but not land use.
- Other Questions/Concerns
  - What happens when there's only enough water for one of Sophie's "co-equal" children (ecosystem v. supply)?
  - Enforcement? Are current methods sufficient?

### Delta Plan Principles

- BDCP serves as basis for the Delta Plan
- BDCP is finalized and approved, without further adjustments by the Legislature
- No NCCP requirements
- Current permit structure remains status quo



## Delta Governance Working Group

### Guiding Principles

#### General Principles

Y   N   ?

- ☒   ☐   ☐   The current governance structure for the Delta is not meeting the needs of anyone
- ☒   ☐   ☐   The state should establish two primary goals for the Delta, restoring the Delta ecosystem and creating a more reliable water supply for California, while recognizing the unique values of the Delta. (While there is broad consensus for the concept, the precise language is still being refined.)
- ☒   ☐   ☐   There is a need to create a new governance structure.
- ☒   ☐   ☐   The new policy & governance structure should be composed of the following elements.
  - ☒   ☐   ☐   A Delta Council or Commission
  - ☒   ☐   ☐   A Delta Plan
  - ☒   ☐   ☐   A Delta Conservancy
  - ☒   ☐   ☐   An enhanced or modified Delta Protection Commission
  - ☒   ☐   ☐   A Delta financing strategy, which could include fees, revenue bonds, and/or GO bonds

Key:

Y   Yes

N   No

?   No Consensus

## Delta Council or Commission

Y N ?

- ☐ ☐ ☒ Create a new council, or
- ☐ ☐ ☒ Modify an existing council – eg California Water Commission
- ☒ ☐ ☐ 7 members, Senate confirmation of Gov. appointees
  - ☐ ☐ ☒ 5 Gov + 1 Sen. & 1 Asm. Appointees
  - ☒ ☐ ☐ Staggered Terms
  - ☐ ☐ ☒ Length of terms
- ☐ ☐ ☒ Interim – Sunset upon certification of a Delta Plan
- ☐ ☐ ☒ Permanent – no sunset
- ☒ ☐ ☐ Include the old CalFed science program
- ☒ ☐ ☐ Lead Agency for Delta Plan
- ☒ ☐ ☐ Lead Agency for implementing BDCP
- ☒ ☐ ☐ Determine consistency of projects/programs with Delta Plan
- ☐ ☐ ☒ Ensure laws regarding water supply, take authority, water quality, etc are enforced.
- ☒ ☐ ☐ Open/Transparent Public decision making
- ☒ ☐ ☐ Fee Authority
- ☒ ☐ ☐ Revenue Bond Authority
  - ☒ ☐ ☐ Conveyance
  - ☒ ☐ ☐ Storage
- ☒ ☐ ☐ Independent – not part of DWR or Natural Resources Agency

### Key:

Y Yes

N No

? No Consensus

## Delta Plan

- ☒ ☐ ☐ Achieve the two primary goals ...
- ☒ ☐ ☐ Comply with CEQA
- ☒ ☐ ☐ Harmonized with BDCP

## BDCP

- ☒ ☐ ☐ Must be NCCP/HCP
- ☐ ☐ ☒ New Delta Council/Commission Lead Agency
- ☐ ☐ ☒ New Delta Council/Commission Certifies

## Delta Conservancy

- ☒ ☐ ☐ Scope of authority includes Legal Delta
- ☒ ☐ ☐ Scope of authority includes Suisun Marsh
- ☐ ☐ ☒ Scope of authority includes additional areas: No consensus as to what additional areas, if any, should be included
- ☒ ☐ ☐ Membership includes majority state appointing authorities
- ☐ ☐ ☒ Membership includes representatives of 5 Delta counties
- ☐ ☐ ☒ Develop conservation plan
- ☒ ☐ ☐ Acquisitions on willing buyer/willing seller basis
- ☒ ☐ ☐ May acquire title fee simple
- ☒ ☐ ☐ May acquire easements:
  - ☒ ☐ ☐ Conservation
  - ☒ ☐ ☐ Flood
  - ☒ ☐ ☐ Agricultural
- ☒ ☐ ☐ May acquire water rights/contract rights

### Key:

Y Yes

N No

? No Consensus

## Delta Protection Commission

- ☒ ☐ ☐ Adjust Membership: Reduce, details to be determined
- ☐ ☐ ☒ Jurisdiction: No consensus as to whether it would be desirable or politically feasible to adjust the boundaries of the primary and secondary zones in the Delta
- ☐ ☐ ☒ Determine consistency of projects/programs with Delta Plan: No consensus as to the detailed scope of issues to be reviewed – Might want to limit to exclude “projects of statewide significance

## Public Advisory Group

- ☐ ☐ ☒ Create to advise Delta Council: Public input is important – while there was not consensus as to the exact vehicle, it is important to have some sort of formal system
- ☐ ☐ ☒ Advice limited to impacts of twin objectives on Delta as Place

## Necessary Near Term Actions (Immediate – 2011)

- ☒ ☐ ☐ Appoint members, by 1/2010, of:
  - ☒ ☐ ☐ Delta Council
  - ☒ ☐ ☐ Conservancy
- ☒ ☐ ☐ Hire staff, by 7/2010, for:
  - ☒ ☐ ☐ Delta Council
  - ☒ ☐ ☐ Conservancy
- ☒ ☐ ☐ Transfer CalFed Science Panel to new Delta Council, by 7/2010
- ☒ ☐ ☐ Review & Expand Levee Emergency Plan – Triage rules, etc
- ☒ ☐ ☐ Review/Approve BDCP
- ☐ ☐ ☒ Ensure the SWP & CVP have “take” authority

### Key:

Y Yes

N No

? No Consensus



- ☐ ☐ ☒ Begin feasibility study of creating delta conveyance utility:  
While a delta conveyance utility has some appeal, there was not consensus as to whether or not a study was necessary
- ☒ ☐ ☐ Begin developing a Delta Zone Management Plan consistent with the Coastal Zone Management Act
- ☐ ☐ ☒ Develop/Implement short term implementation plan: No consensus as to whether or not a short term implementation plan would be necessary or desirable
- ☒ ☐ ☐ Establish/Adopt fee authority
- ☐ ☐ ☒ Establish Special Master for Delta: May be needed – details need to be clarified.
- ☒ ☐ ☐ Begin identifying and developing information necessary for development of the Delta Plan – eg, water budget for Delta
- ☒ ☐ ☐ Initiate CEQA on Delta Plan
- ☐ ☒ ☐ Identify issues not in BDCP that need to be included in Delta Plan
- ☒ ☐ ☐ Identify issues not in Delta Vision that need to be included in Delta Plan
- ☒ ☐ ☐ Apply for federal designation such as a Natural Heritage Area
- ☒ ☐ ☐ Review responsibilities of various state/federal/local agencies to identify and avoid/reduce/eliminate duplicating roles
- ☒ ☐ ☐ Legislative review of Fish & Game to determine its ability to provide the appropriated level of oversight & provide recommendations for reform
- ☒ ☐ ☐ Legislative review of State Water Board to determine its ability to accomplish the following & provide recommendations for reform:

Key:

Y Yes

N No

? No Consensus

- ☒ ☐ ☐ Provide accurate water rights and water use information
- ☒ ☐ ☐ Provide timely enforcement water rights laws
- ☒ ☐ ☐ Provide timely enforcement of water quality laws

#### **Other open/unresolved issues**

- ☒ ☐ ☐ Delete the Bay-Delta Authority
- ☒ ☐ ☐ Move SWP on budget
- ☐ ☐ ☒ Adopt revised Delta Plan: While there is a need for periodic review and revision, there is no consensus as to the frequency – range appears to be sometime with a 5 – 10 year range
- ☐ ☒ ☐ Create Water Conservation oversight Task Force

#### Key:

Y Yes

N No

? No Consensus

# California Legislature

## JOINT HEARING:

### ASSEMBLY WATER, PARKS AND WILDLIFE AND SENATE NATURAL RESOURCES AND WATER COMMITTEES

HUFFMAN AND PAVLEY, CHAIRS

## 2009 PROPOSED DELTA/WATER LEGISLATION: PERSPECTIVES ON THE PACKAGE

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Tuesday, August 18, 2009  
State Capitol, Room 4202  
9:00 a.m.

### A G E N D A – *Revised*

#### I. OPENING COMMENTS

#### II. AUTHOR PRESENTATIONS

- |                    |                   |
|--------------------|-------------------|
| ▪ SB 12 (Simitian) | ▪ AB 39 (Huffman) |
| ▪ SB 229 (Pavley)  | ▪ AB 49 (Feuer)   |
| ▪ SB 458 (Wolk)    |                   |

#### III. SCHWARZENEGGER ADMINISTRATION PERSPECTIVE

- Lester Snow, Director, Department of Water Resources
- Don Koch, Director, Department of Fish & Game

#### IV. PANEL: DELTA VISION & INDEPENDENT SCIENCE PERSPECTIVES

- Phil Isenberg, Chair, Delta Vision Blue-Ribbon Task Force
- Jeffrey Mount, CALFED Independent Science Board & UC Davis

- V. PANEL: DELTA COMMUNITY PERSPECTIVES**
- A. Mary Nejedly Piepho, Contra Costa County Supervisor
  - B. Mike McGowan, Yolo County Supervisor
  - C. Greg Gartrell, Contra Costa Water District
  - D. Tom Zuckerman, Central Delta Water Agency
  - E. Barbara Barrigan-Parrilla, Restore the Delta
- VI. PANEL: AGRICULTURAL COMMUNITY PERSPECTIVES**
- A. Brent Walthall, Kern County Water Agency
  - B. Danny Merkley, California Farm Bureau Federation
  - C. Thad Bettner, Northern California Water Association
- VII. PANEL: ENVIRONMENTAL COMMUNITY PERSPECTIVES**
- A. Zeke Grader, Pacific Coast Federation of Fishermen's Associations
  - B. Kim Delfino, Defenders of Wildlife
  - C. Barry Nelson, Natural Resources Defense Council
- VIII. PANEL OTHER COMMUNITIES OF INTEREST**
- A. Debbie Davis, Environmental Justice Coalition for Water
  - B. Mark Franco, Winnemem Wintu Tribe
- IX. PANEL: URBAN COMMUNITY PERSPECTIVES**
- A. Roger Patterson, Metropolitan Water District of Southern California
  - B. Rande Kanouse, East Bay Municipal Utilities District
  - C. Jim Levine, Regional Economic Association Leaders of California
- X. PUBLIC COMMENT**

● *Testimony may be subject to time limits* ●

**Opening Statement of Assemblyman Jared Huffman  
Chair, Assembly Water, Parks & Wildlife Committee  
Joint Hearing: 2009 Proposed Delta/Water Legislation  
August 18, 2009**

Today's hearing on the package of five bills regarding the Delta crisis and water reforms has 2 basic goals: 1) to introduce the initial pre-print bills the Legislature has developed to address these critical issues; and 2) to hear the perspectives of a broad set of experts and stakeholders – perspectives that will help inform the process of revising and voting on these bills in the weeks ahead.

I don't need to tell most of you that we arrive at this hearing at very auspicious moment for California water. We've got a dying Delta ecosystem; crashing fisheries; the 3<sup>rd</sup> consecutive year of drought for most of the state; the 2<sup>nd</sup> consecutive year of no salmon season in California. The Delta is at the center of a very real and severe water crisis, and the Delta is in bad shape.

Many of us were pleased last week when a top Obama administration official recognized the Delta as a resource of national and international importance – on par with the Everglades, the Great Lakes and the Chesapeake Bay. But this is also the year that the Delta earned a more dubious recognition – the #1 spot on the list of "America's Most Endangered Rivers," published annually by the conservation group American Rivers.

Scientists agree there are *three* major factors contributing to the demise of the Delta: excessive water diversions; polluted runoff and discharges from farms and cities; and invasive species. But I would argue there is a *fourth* culprit: the lack of accountable, transparent, and effective water governance.

Government agencies in the Delta – more than 200 of them – have failed to resolve this crisis, in part because no agency is really in charge. And rather than avoiding or leading us out of the crisis, some of them have made it worse. They've fought over the Delta, in interagency bureaucratic battles, in court, and in the Legislature.

As recently as the last few weeks, the Department of Water Resources filed briefs in federal court seeking to set aside peer-reviewed federal biological opinions for salmon and delta smelt – just after getting the Dept. of Fish & Game to adopt those same biological opinions under California’s Endangered Species Act. California cannot afford this continuing disarray on the most critical water and ecosystem issues facing our state.

Today’s hearing is part of the Legislature’s attempt to forge a way forward and out of this crisis. While some have characterized this effort as rushed, it’s actually been a long road and we’re building on an impressive body of work.

In 2006, the legislature directed a process that came to be known as “Delta Vision.” It led to the creation by the Governor of the Delta Vision Blue Ribbon Task Force, and culminated late last year with the Task Force’s completion of a comprehensive Strategic Plan for the Delta. Since that time, we’ve had multiple informational hearings in our respective houses and committees, and we convened a 60-day bicameral and bipartisan “working group” to assess the studies and plans developed over the past few years and to lay the groundwork for comprehensive legislation to address the statewide water crisis and the focal point of that crisis, the Delta.

As we begin a critical public phase of this process today, let’s remember what is at stake and what this debate is really about:

- Probably our most important decision is whether to continue with status quo, or to launch a new governance and planning framework for the Delta – to reset our goals for the recovery of endangered species and the reestablishment of a healthy estuarine ecosystem, instead of the chaos of trying to avoid extinction on permit-by-permit, species-by-species basis. The question is whether to change the way key policy and infrastructure decisions are made, and the *criteria* by which they are made.
- A lot of people seem to be under the impression that the decision before us is whether or not to build the Peripheral Canal. That is not correct. The legislation before you today takes no side on the *myriad* possibilities for improving Delta conveyance – whether fixes to the through-Delta system, new points of diversion, or new modes of conveyance. On the other hand, DWR and state and federal water contractors are *right now* pursuing a permit process that could result in permits for the development of a new conveyance option for the Delta. The administration has argued it doesn’t need approval from the legislature, or the voters, to implement that project. Not everyone agrees with them, but I think

everyone ought to agree that if we fail to pass legislation this year, that process will continue.

- Think about the status quo. *Right now* the Delta communities don't have any real say in how the state makes decisions on many of the key issues at stake in the Delta, including existing or future water conveyance. *Right now* there is no public forum where environmental groups and other interests can bring their concerns about whether water supply operations or ecosystem restoration are meeting the requirements of state and federal law. *Right now* there is no entity charged with balancing the conflicting interests of water supply, ecosystem restoration and protection of the Delta communities.

So what we have to decide in the next month, is whether to continue with the current situation and cross our fingers that the Delta will somehow pull out of this death spiral and wet weather will deliver us from drought; or show some vision and leadership to establish a bold new direction that is responsive to the crises we are facing.

It's time to hear from you. This morning's conversation is about perspectives on the Delta crisis – not vague, general perspectives, but panels that will provide informed and thoughtful input on the Delta crisis with the bill package we've released in pre-print form. My hope is that the witnesses will speak to the following basic questions:

- 1) Is the status quo acceptable? I don't think anyone can seriously argue that *current Delta policy* is sustainable, or that the *status quo* is working for the Delta – but if anybody does believe that, we need to hear from them today.
- 2) How important is it that we have a Delta solution this year?
- 3) What do you see as the elements of that package of Delta and water solutions?
- 4) How do you think we can improve the draft package we've developed?

This won't be the last chance for input. There will be two more informational hearing with the committees next week, and then an open and deliberative conference process where the pre-print bills will be examined in great detail.

So with that, I thank Chair Pavley and colleagues, and welcome the panel discussions.

# # #

# 2009 PROPOSED DELTA/WATER LEGISLATION: PERSPECTIVES ON THE PACKAGE

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# **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**

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](http://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](http://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.

# California Legislature

## JOINT HEARING:

### ASSEMBLY WATER, PARKS AND WILDLIFE AND SENATE NATURAL RESOURCES AND WATER COMMITTEES

HUFFMAN AND PAVLEY, CHAIRS

**Tuesday, August 25, 2009**  
**State Capitol, Room 4202**  
**1:30 p.m.**

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## The 2009 Delta Bills

## A G E N D A

### **I. AB 39 (Huffman) Preprint Assembly Bill 1**

- A. Legal Framework: Co-Equal Goals
- B. Early Actions: Instream Flow Determinations
- C. Bay-Delta Conservation Plan: Requirements & Approvals

### **II. SB 12 (Simitian) Preprint Senate Bill 1**

- A. Governance: Council Structure & Authority
- B. Governance: Water Master Authority
- C. Water Conveyance Decision
- D. Delta Finance

### **III. SB 458 (Wolk) Preprint Senate Bill 4**

- A. Delta Protection Commission: Relationship to Council and Local Governments
- B. Conservancy: Scope of Authority
- C. Conservancy: Ecosystem Restoration & Economic Development

● *Testimony may be subject to time limits* ●

# California Legislature

## JOINT HEARING:

### ASSEMBLY WATER, PARKS AND WILDLIFE AND SENATE NATURAL RESOURCES AND WATER COMMITTEES

HUFFMAN AND PAVLEY, CHAIRS

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Thursday, August 27, 2009

State Capitol, Room 4202

1:30 p.m. or upon adjournment of Appropriations Committee

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## The 2009 Statewide Water Management Bills

### A G E N D A

- I. Preprint Assembly Bill 2 (AB 49 content) by Assemblymember Feuer
- II. Preprint Senate Bill 4 (SB 458 content) by Senator Wolk
- III. Preprint Senate Bill 2 (SB 229 content) by Senator Pavley
- IV. Public Comment

• *Testimony may be subject to time limits* •



**CONFERENCE COMMITTEE**  
**ON**  
**SB 12, SB 229, SB 458, AB 39 and AB 49**

Steinberg and Bass, Chairs

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Wednesday, September 2, 2009

9:00 a.m.

State Capitol, Room 4203

**A G E N D A**

- I. Chairs' Opening Comments
- II. Review of Agenda
- III. Presentation from Leadership Staff
- IV. Response and Comments from Administration
- V. Summary of Outstanding Issues
  - Co-equal goals
  - Bay-Delta Conservation Plan
  - Water Finance
- VI. Schedule



**CONFERENCE COMMITTEE**  
**ON**  
**SB 12, SB 229, SB 458, AB 39 and AB 49**

Steinberg and Bass, Chairs

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Thursday, September 3, 2009

Upon Call of the Chairs

State Capitol, Room 4203

**A G E N D A**

- A. Administration Presentation
- B. Review of Identified Issues
  - 1. BDCP Integration – AB 39
  - 2. Who Certifies BDCP EIR – AB 39
  - 3. Definition of Co-Equal Goals – SB 12, SB 458, AB 39
  - 4. Delta Stewardship Council Membership & Terms – SB 458
  - 5. Watermaster – SB 12
  - 6. Instream Flows – AB 39, SB 12
  - 7. Agency Consistency Determination – SB 12
  - 8. Reduce Dependence on the Delta – SB 12, AB 39
  - 9. Relationship between Delta Protection Commission & Delta Stewardship Council – SB 458
  - 10. Delta Conservancy – SB 458
  - 11. Science Program – SB 12
  - 12. Finance – SB 12
  - 13. Groundwater Monitoring and Water Rights – SB 229
  - 14. Water Conservation – SB 49
- C. Public Comment

\* Testimony may be subject to time limits \*

# California State Legislature

## **CONFERENCE COMMITTEE ON SB 12, SB 229, SB 458, AB 39 and AB 49**

Steinberg and Bass, Chairs

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Friday, September 4, 2009

2:30 p.m. or upon call of the Chairs

State Capitol, Room 4203

## **A G E N D A**

### *Focus on Finance*

- I. Chairs' Opening Comments
- II. Legislative Analyst Office Presentation
- III. Presentations of Finance Proposals
  - Senator Joe Simitian
  - Senator Dave Cogdill
  - Assemblywoman Anna Caballero
- IV. Public Comment Regarding Water Finance

\*Testimony may be subject to time limits\*

# California State Legislature

## **CONFERENCE COMMITTEE ON SB 12, SB 229, SB 458, AB 39 and AB 49**

Steinberg and Bass, Chairs

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Monday, September 7, 2009

1:00 p.m. or upon call of the Chairs

State Capitol, Room 4203

## **A G E N D A**

- I. Chairs' Opening Comments
- II. AB 49 (Feuer/Huffman) – Water Conservation
  - Outstanding Issues
  - ACWA/SAWPA Approach – SB 261 (Dutton/Ducheny)
- III. SB 229 (Pavley) – Water Diversion Reporting
  - Water Diversion & Use Reporting
  - Groundwater Monitoring
- IV. Public Comment: Water Diversion Reporting & Conservation
- V. Update on Delta Bills

\*Testimony may be subject to time limits\*

## **AB 39 – Draft Conference Committee Report September 2, 2009**

Senator Pavley and I sat through the last two weeks of hearings and heard a wide range of comments on this package of bills. I listened carefully to stakeholders and the Administration, and have begun to address some of those comments. This is a start, not an end to the work we have ahead of us on my Delta Plan bill, AB 39.

The change we made for the version before you today were largely technical, but also include:

- **Clarification of the Instream Flow Determinations:** to make it clear that we are calling for the State Water Board to give us a preliminary determination of what the Delta needs as far as instream flows, because that's the right question. We ask first, what the Delta needs, before we set off to make major changes.
- **Narrowing of Conservation in Delta Plan:** to allow AB 49 to take center stage on water conservation.
- **Eliminate Council EIR Certification for BDCP:** to shift attention to the Council's decision on incorporating the Bay Delta Conservation Plan into the Delta Plan. We have retained, at this point, the factors that go into the Council's decision.

In addition, we have made some adjustments that address other less central issues, to clarify water supply reliability, the Council's succession to the CALFED program, and goals for BDCP and the larger ecosystem program.

# **2009 California Delta-Water Bill Package**

## **Summary – July 31, 2009**

### **Delta Conservancy and Delta Protection Commission (Wolk)**

- Delta Conservancy – creation & authority
- Delta Protection Commission – modifications

### **Delta Governance (Simitian)**

- General Provisions – policies & definitions (Div. 35, Part 1)
- Early Actions – before adoption of Delta Plan (Div. 35, Part 2)
- Delta Stewardship Council – creation & authority (Div. 35, Part 3)
- Delta Water Master – creation & authority
- Delta Independent Science Board – creation & authority
- Delta Finance (Div. 35, Part 5)

### **The Delta Plan (Huffman)**

- General Provisions – policies & definitions (Div. 35, Part 1)
- Early Actions – before adoption of Delta Plan (Div. 35, Part 2)
- Delta Plan Development – completed by 2011 (Div. 35, Part 4)
- Bay Delta Conservation Plan Requirements

### **Water Use Reporting (Pavley)**

- Water Diversion & Use Reporting – requirements & enforcement
- Civil Liability for Water Trespass - modifications
- Groundwater Elevation Monitoring

### **Water Conservation and Sustainable Management (Feuer/Huffman)**

- Urban Water Conservation – 20% by 2020
- Agricultural Water Management Plans
- Sustainable Regional Water Resource Management

**CONFERENCE COMMITTEE**  
**ON**  
**SB 12, SB 229, SB 458, AB 39 and AB 49**

Steinberg and Bass, Chairs

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**Conference Issues List**

1. BDCP Integration – AB 39
2. Who Certifies EIR – AB 39
3. Definition of Co-Equal Goals – SB 12, SB 458, AB 39
4. Delta Stewardship Council Membership & Terms – SB 12
5. Watermaster – SB 12
6. Instream flows – AB 39, SB 12
7. Agency Consistency Determination – SB 12
8. Reduce Dependence on the Delta – SB 12, AB 39
9. Relationship between Delta Protection Commission & Delta  
Stewardship Council – SB 458
10. Delta Conservancy – SB 458
11. Science Program – SB 12
12. Finance – SB 12
13. Groundwater Monitoring and Water Rights – SB 229
14. Water Conservation – AB 49

**CONFERENCE COMMITTEE**  
**ON**  
**SB 12, SB 229, SB 458, AB 39 and AB 49**

Steinberg and Bass, Chairs

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**Outstanding Issues – Options**

**2. Who Certifies EIR – AB 39**

*Issue:* Who should certify the Bay Delta Conservation Plan's (BDCP) environmental impact report (EIR)?

*Comment:* Preprint Senate Bill 1 (PSB 1) proposed that the new Delta Stewardship Council certify the BDCP EIR.

*Options:*

- (1) AB 39 proposes, on page 11 in §85320 (f), that DWR prepare the EIR and consider the Delta Stewardship Council's recommendations in DWR's final EIR.
- (2) No other option proposed at this time

**4. Delta Stewardship Council Membership & Terms – SB 12**

*Issue 1:* Who should serve on the Delta Stewardship Council?

*Comment:* Delta Vision proposed that all Council members be appointed by the Governor and confirmed by the Senate, and NOT reflect any representation of regions, categories or professions (e.g. DPC Chair). Delta representatives assert that the Council needs more local representation.

*Options:*

- (1) SB 12 proposes, on page 7 in §85200 (b)(1), Council membership includes 7 members: 4 appointed by Governor, 2 by the Legislature, and the chair of the Delta Protection Commission (DPC).
- (2) Remove designated slots (DPC chair or legislative)
- (3) Add regional representatives for the Delta and other regions
- (4) Specify slots for certain expertise.

#### 4. Delta Stewardship Council Membership & Terms – SB 458

*Issue 2:* How long should Council members serve?

*Comment:* PSB 1 proposed staggered terms of 8 years with no opportunity for reappointment – Delta Vision proposed 5-year terms. SB 12 current has blanks for length of terms.

*Options:*

- (1) Establish 8-year terms with no opportunity for reappointment
- (2) Establish 4-year terms with two term opportunity for reappointment
- (3) Establish 4-year terms with no term limits
- (a) Stagger terms in one year increments
- (b) Stagger terms in 2 year increments
- (c) Don't stagger terms

#### 8. Reduce Dependence on the Delta – SB 12, AB 39

*Issue:* Should there be an official state policy to reduce dependence on the Delta?

*Comment:* SB 12 and AB 39 propose, on pages 3 & 2 respectively, in §85021, “The policy of the State of California is to reduce dependence on water from the Delta watershed, over the long-term, for statewide water supply reliability. Each region that depends on water from the Delta shall improve its regional self-reliance for water through investment in water-use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.

*Options:*

- (1) Maintain current language
- (2) Delete §85021 from both bills
- (3) Modify current language, to state “It is the intent of the Legislature, in enacting this division, to reduce dependence on water from the Delta watershed ...”



## 10.Delta Conservancy – SB 458

*Issue 1:* Should the conservancy be allowed to hold Fee Title?

*Comment:* All state conservancies are established to make investments in important conservation lands within the jurisdiction of each conservancy. These conservancies also have a management program for these lands. Conservancies enter into contracts with willing sellers, and the terms of those transactions may cover the entire range of possible interests in land ranging from fee title to easements. The major exception is the Sierra Nevada Conservancy which, as a political compromise, is not allowed to hold lands in fee.

*Options:*

- (1) SB 458, on page 17, in §32366, prohibits the Conservancy from acquiring fee interest in real property.
- (2) Allow the Conservancy to own lands in fee
- (3) Require the Conservancy to own conservation easements without restriction but provide that it could own lands in fee for a limited time (2-3 years) while it attempts to locate another entity that could own these lands.
- (4) Authorize the Conservancy to enter into a joint powers agreement (JPA) with one or more delta counties to hold fee interest.

## 10.Delta Conservancy – SB 458

*Issue 2:* What should be the priority or priorities for the Conservancy?

*Comment:* All existing conservancies focus on their conservation mission. SB 458 also provides that the proposed Delta Conservancy would fund eligible infrastructure, agricultural, and other economic investments. The Delta Protection Commission, a different entity, is focused on identifying these investment opportunities in the Delta, but has never had funding to pursue them. The question is not whether these other activities should receive funding. Instead, the question is whether the conservancy's mission should include these activities.

*Options:*

- (1) SB 458, on page 13, in §32322 (a), make the conservancy's primary mission to "support efforts that advance both environmental protection and the economic well-being of Delta residents in a complementary manner ..."
- (2) Make the conservancy's primary mission conservation and ecosystem restoration.
- (3) Authorize the conservancy to serve as the fiscal agent for infrastructure and other investments approved by the Delta Protection Commission so that there can be some coordination between the environmental restoration work of the conservancy and the economic and infrastructure work of the commission, but retaining the separate responsibilities of each entity. prohibits the Conservancy from acquiring fee interest in real property.

## 10.Delta Conservancy – SB 458

*Issue 3:* Who should chair the Conservancy?

*Comment:* Most conservancies elect their chairperson from its membership. The membership of these conservancies is comprised of a negotiated mix of state and local representatives, with the state generally holding a majority (since it is a state entity).

*Options:*

- (1) SB 458, on page 115, in §32332, requires the chairperson to be one of the representatives of the Delta Counties
- (2) Eliminate proposed language and allow conservancy to elect its own chairperson.
- (3) Establish some rotational system for in-Delta chairs every 4 years, or some similar proposal.

## 10.Delta Conservancy – SB 458

*Issue 4:* Should recipients of grants from the conservancy be required to provide in lieu payments to local governments?

*Comment:* The Delta counties are concerned that lands transferred to a non-governmental organization would be exempt from paying property taxes. Staff is not aware of a similar provision for other conservancies.

*Options:*

- (1) SB 458, on page 17, in §32364.5 (b) (4), requires recipients of grants from the conservancy be required to provide in lieu payments to local governments
- (2) Delete existing language.

## 11.Science Program – SB 12

*Issue:* How should the Delta science program be structured?

*Comment:* PSB 1 contained language establishing a Delta Science Board, but not a Delta Science Program. One of the few highpoints of the CalFed program was its independent science program. SB 12 contains language to establish an independent Delta Science Board and Delta Science Program patterned after the CalFed program.

*Options:*

- (1) SB 12, on page 11, in Chapter 4, establishes provision for a Delta Science Board and Delta Science Program.
- (2) Modify current language to allow the inclusion of qualified engineers on the Science Board

Date of Hearing: September 11, 2009

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE  
Jared William Huffman, Chair  
SB 68 (Steinberg) – As Proposed to Be Amended: September 11, 2009

SENATE VOTE: (vote not relevant)

SUBJECT: Water

SUMMARY: Reforms policy and governance for the Sacramento-San Joaquin Delta (Delta), establishes statewide conservation effort, and provides enforcement tools for the State Water Resources Control Board to enforce existing water rights laws. Specifically, this bill:

- 1) Reconstitutes the Delta Protection Commission (DPC).
  - a) Reduces membership of the DPC from 23 to 15, eliminating several state agencies.
  - b) Designates DPC chair as a voting member of the Delta Stewardship Council (Council).
  - c) Changes nature of DPC advisory committees
- 2) Requires DPC to create a regional economic sustainability plan, including creation of a Delta Investment Fund in the State Treasury.
- 3) Authorizes DPC to make recommendations to Council and requires Council to consider DPC recommendations and determine, in Council discretion, if recommendations are feasible and consistent with the objectives of the Delta Plan.
- 4) Requires the DPC, by July 2010, to prepare and submit to the Legislature recommendations regarding the potential expansion of or change to the Delta's primary zone.
- 5) Creates a new Sacramento-San Joaquin Delta Conservancy (Conservancy).
  - a) Authorizes Conservancy, as a primary state agency for ecosystem restoration, to support efforts that advance environmental protection and the economic well-being of Delta residents, including specified activities;
  - b) Creates Conservancy board with 11 voting members of the board, including the Secretary of the Natural Resources Agency; Director of Finance; one member (or designee) of each of board of supervisors for Contra Costa, Sacramento, San Joaquin, Solano, and Yolo County; two public members, appointed by the Governor; one public member appointed by the Senate Committee on Rules; and, one public member appointed by the Speaker.
  - c) Designates nonvoting members of the board and nonvoting liaison advisers who would serve in an advisory, nonvoting capacity;
  - d) Establishes terms of board members, from "at the pleasure" (for Governor and boards of supervisors) to four years (for legislative appointments) with 2-term limit.

- e) Requires voting members of the board to elect a chairperson and vice chairperson, and other officers as necessary, from among the voting members, but chairperson must be from among county supervisor members.
  - f) Provides the Conservancy administrative powers, including authority to hire staff, adopt rules and procedures for conduct of the Conservancy's business, establish advisory committees, and enter into contracts.
- 6) Establishes and limits the Conservancy's powers and duties, including:
- a) Authorizes Conservancy, as a primary state agency for ecosystem restoration, to support efforts that advance environmental protection and the economic well-being of Delta residents, including specified activities;
  - b) Limits the jurisdiction and activities of the Conservancy to the Delta and Suisun Marsh except if the board makes certain findings;
  - c) Establishes the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury, which may provide funding for ecosystem restoration projects consistent with the Conservancy's strategic plan or for "regional sustainability" consistent with the DPC's "Regional Sustainability and Land Use Plan;"
  - d) Authorizes Conservancy, subject to specified conditions, to acquire, manage and transfer interests in property and water rights, with a preference for conservation easements;
  - e) Authorizes the Conservancy to accept funding from a broad range of sources, including creation and management of endowments;
  - f) Requires the Conservancy to develop a strategic plan consistent with the Delta Plan, DPC's Regional Sustainability and Land Use Plan, the Central Valley Flood Protection Plan, the Suisun Marsh Preservation Act, and the Habitat Management, Preservation and Restoration Plan for the Suisun Marsh;
  - g) Authorizes the Conservancy to collaborate with other organizations and impose certain conditions on any grants it makes; and,
  - h) Prohibits the Conservancy from regulating land-use, exercising power over water rights held by others, or exercising the power of eminent domain.
- 7) Increases consequences for not reporting water diversions or use.
- a) Establishes rebuttable presumption that diversions/use did not occur in certain State Water Resources Control Board (SWRCB) proceedings, but would not apply to diversion/use occurring before January 1, 2009;
  - b) Creates rebuttable presumption that no use occurred in certain SWRCB proceedings, but would not apply to diversion/use occurring before January 1, 2009;

- c) Raises current additional penalty for unauthorized diversions from 100% of amount of fees that would have been collected had that diversion been reported, to 150%;
  - d) Authorizes additional penalty for failing to file, or material statements in, statements of diversion and use of 150% of the amount of fees that would have been collected; and,
  - e) Adds a new penalty for violators of monitoring requirements or activities, not to exceed five hundred dollars (\$500) for each day in which the violation occurs.
- 8) Imposes or increases penalties for violating water rights laws.
- a) Increases penalties for unauthorized diversion or use to sum of \$1,000 per day of violation plus \$1,000 per acre foot diverted in violation;
  - b) Increases penalties for violating a cease and desist order to not more than sum of \$2,500 per day plus \$2,500 per acre foot diverted in violation;
  - c) Adds penalty, not to exceed \$500 per day of violation, for any violation of term or condition of a permit, license, certificate, or registration, or any order or regulation adopted by SWRCB under preventing waste or unreasonable use; and,
  - d) Requires SWRCB to adjust all maximum penalties for inflation as measured by the June to June change in the California CPI.
- 9) Expands SWRCB authority to enforce water rights laws.
- a) Allows SWRCB, in certain investigations, to order any water diverter or water user to prepare technical or monitoring program reports under penalty of perjury;
  - b) Adds violations of unreasonable use regulations and reporting/monitoring requirements to list of actions for which SWRCB can issue a cease and desist order.
  - c) Expands existing legislative intent language to encourage vigorous enforcement to prevent waste and unreasonable use and reporting/monitoring requirements.
- 10) Expands list of filing fees, to include: registrations for small domestic use or livestock stockpond use; petitions to change the point of diversion, place of use, or purpose of use of a water right that is not subject to a permit or license to appropriate water; and statements of water diversion and use.
- 11) Authorizes SWRCB to initiate statutory adjudication to determine rights of various claimants to the water of a stream system *under its own motion* if after a hearing it finds that the public interest and necessity will be served by a determination of the rights involved
- 12) Authorizes SWRCB to issue an interim relief order, after notice and opportunity for a hearing, to enforce specified laws, including authority to petition superior court to issue a temporary restraining order, preliminary injunction, or permanent injunction, and civil penalty of not more than \$5,000 for each day of violation.

- 13) Establishes statewide urban water conservation target of 10% by 2015, and 20% by 2020.
- 14) Establishes processes for urban water suppliers to meet the conservation targets:
  - a) Requires urban retail water suppliers, individually or on a regional basis, to develop an urban water use target by December 31, 2010;
  - b) Provides three methodologies for urban water suppliers to determine and achieve their water use target:
    - i) 20% reduction in baseline daily per capita use, or
    - ii) Combination of efficiency standards for residential indoor use [55 gallons per capita daily (gpcd)]; residential outdoor use (Model Water Efficient Landscape Ordinance); and commercial, industrial, and institutional (CII) use (10 % reduction); or,
    - iii) 5% reduction in the Department of Water Resources (DWR) regional targets.
  - c) Requires minimum 5 % reduction in base water use by 2020 for all urban water suppliers.
  - d) Allows recycled water to count toward meeting urban supplier's water use target if recycled water offsets potable water demands.
  - e) Requires urban water suppliers to report in their urban water management plans due in 2010 the identified targets in 2010, and to report progress in meeting the targets every five years in subsequent updates of their urban water management plans;
  - f) Allows urban suppliers to consider certain differences in their local conditions when determining compliance.
  - g) Requires urban water suppliers to hold public hearings to allow for community input on the supplier's implementation plan for meeting their water use target, and requires the implementation to avoid placing a disproportionate burden on any customer sector.
  - h) Prohibits urban suppliers from requiring changes that reduce use of process water – defined in the bill as water used in production of a product – and allows urban water supplier to exclude process water from the calculation of gross water supply if substantial amount of its water deliveries are for industrial use.
  - i) Conditions eligibility for water management grants and loans on an urban water supplier's compliance with meeting the requirements established by the bill.
- 15) Requires DWR review and reporting on urban water management plans and report to the Legislature by 2016 on progress in meeting the 20% statewide target, including recommendations on changes to the standards or targets in order to achieve the 20% target.
- 16) Creates a CII Task Force to develop best management practices (BMPs), assess the potential for statewide water savings if the BMPs are implemented, and report to the Legislature.

- 17) Re-establishes agricultural water management planning program.
  - a) Defines "agricultural water supplier" as one that delivers water to 10,000 or more of irrigated acres, excluding recycled water, but exempts suppliers serving less than 25,000 irrigated areas unless funding is provided to the supplier for those purposes.
  - b) Requires development and implementation of agricultural water management plans, with specified components by 2012, with 5-year updates.
  - c) Requires DWR to review plans and report to the Legislature on status and effectiveness.
  - d) Requires two "critical" efficient agricultural water management practices (measurement and pricing) and – only if locally cost-effective – 10 additional practices.
  - e) Conditions eligibility for water management grants and loans on an agricultural water suppliers' compliance with meeting the requirements for implementation of efficient water management practices.
  - f) Establishes agricultural water supplier reporting requirements on agricultural efficient water management practices.
- 18) Requires DWR to promote implementation of regional water resource management practices through increased incentives/removal of barriers and specifies potential changes.
- 19) Requires DWR, in consultation with SWRCB, to develop or update statewide targets as to recycled water, brackish groundwater desalination, and urban stormwater runoff.
- 20) Establishes statewide groundwater monitoring program that engages local groundwater management interests to volunteer to monitor groundwater elevations
  - a) If more than one party volunteers for monitoring, DWR consults with interested parties to determine who would monitor, based on certain priorities.
  - b) Groundwater monitoring starts January 1, 2012, and is made publicly available.
  - c) DWR identifies extent of monitoring, by 2012, and determines, in basins without monitoring, if there was a local party willing to conduct the monitoring;
  - d) If no local party volunteers, DWR determines certain facts as to need for monitoring, and then monitors groundwater elevations in critical basins, assessing fee on well owners to recover direct costs.
  - e) DWR updates groundwater report by 2012, and thereafter in years ending in 5 and 0.
- 21) Repeals the California Bay-Delta Authority Act.
- 22) Establishes new legal framework for Delta management which:



- a) Sets the coequal goals of "providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem" as the foundation for state decisions as to Delta management.
  - b) Sets certain objectives as inherent in the coequal goals.
  - c) Sets state policy of reducing reliance on the Delta to meet future water supply needs through a statewide strategy of investing in improved regional supplies and conservation.
  - d) Requires Council land-use decisions to be guided by certain findings, policies, and goals.
  - e) States certain "fundamental goals for managing land use in the Delta."
  - f) Describes the longstanding constitutional principle of reasonable use and the public trust doctrine as the foundation of state water management policy.
  - g) Preserves specified statutes and legal doctrines as unaffected by the new division in the Water Code, including area-of-origin protections, water rights and public trust doctrine.
  - h) Establishes the Council as the successor to the California Bay-Delta Authority, and provides for the Council to assume its responsibilities.
  - i) Defines certain terms, including the following key terms:
    - i) "Coequal goals" means "the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem," but those goals are achieved in a manner to protect the Delta as an evolving place.
    - ii) "Covered action" means a Delta related plan or program that meet certain conditions, including significant impact on achievement of the coequal goals.
    - iii) "Restoration" means achieving a close approximation of the Delta's ecosystem's natural potential, given past physical changes and future impact of climate change.
- 23) Requires the Council, DWR or Department of Fish & Game (DFG) to take certain "early actions," including:
- a) Appointment of Delta Independent Science Board
  - b) Development of strategy to engage federal government in the Delta
  - c) Development of DFG recommendations for instream flow needs in the Delta
  - d) Certain Delta ecosystem restoration projects to start now, before the Delta Plan is completed, including the "Two-Gates Fish Protection Demonstration Project"
- 24) Requires SWRCB to develop new flow criteria for the Delta ecosystem necessary to protect public trust resources.



- a) Specifies process and substance of development of flow criteria.
  - b) Requires SWRCB approval of change in State Water Project (SWP) and Central Valley Project (CVP) point of diversion, as specified, to include flow criteria.
  - c) Requires SWRCB to enter agreement with SWP/CVP contractors to pay costs.
  - d) Preserves SWRCB authority to review water rights and impose terms and conditions on water right permits.
- 25) Requires SWRCB to submit prioritized schedule and costs for instream flow studies for the Delta and other high priority streams, with completion by certain dates.
- 26) Creates Delta Stewardship Council as an independent state agency.
- a) 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.
  - b) Provides for Council salaries, hiring of Council staff and headquarters.
  - c) Specifies authority of Council, including:
    - i) Administrative authorities (*e.g.*, contracting).
    - ii) Performance measurements.
    - iii) Appeals of state/local agency determinations of consistency with Delta Plan, including specified procedures for such appeals.
- 27) Creates Delta Watermaster as enforcement officer for SWRCB in the Delta.
- 28) Creates Delta Independent Science Board (Science Board) and Delta Science Program.
- 29) Requires 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.
- a) Requires Council to consider strategies and actions set forth in the Delta Vision Blue Ribbon Task Force Strategic Plan (Strategic Plan).
  - b) Allows Council to identify actions that state or local agencies may take to implement the subgoals or strategies.
  - c) Requires consultation and cooperation between the Council and federal, state and local agencies in developing the Delta Plan.
  - d) Requires Council to review the Delta Plan every five years, allowing the Council to request state agency recommendations for revisions.
  - e) Requires Council to develop the Plan consistent with federal statutes, including the Coastal Zone Management Act, Clean Water Act and the Reclamation Act.

- 30) Requires Delta Protection Commission (DPC) to develop proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place, for consideration by the Council as part of Delta Plan, including proposals for:
- a) Federal/state designation of the Delta as a place of special significance.
  - b) Regional economic plan to increase investment in agriculture, recreation, tourism and other resilient land uses in the Delta, including administration of Delta Investment Fund.
  - c) Expansion of state recreation areas in the Delta.
  - d) Market incentives and infrastructure to support Delta agriculture.
- 31) Requires Delta Plan to further the coequal goals of Delta ecosystem restoration and a reliable water supply.
- a) Limits geographic scope of ecosystem restoration projects to the Delta (defined separately as legal Delta, Suisun Marsh and Yolo Bypass), except for ecosystem projects outside the Delta that contribute to achievement of coequal goals.
  - b) Requires Delta Plan to promote specified characteristics and include specified strategies for a healthy Delta ecosystem.
- 32) Requires Delta Plan to promote a more reliable water supply to:
- a) Assists in meeting the needs of reasonable and beneficial uses of water.
  - b) Sustains the economic vitality of the state.
  - c) Improves water quality to protect human health and the environment.
- 33) Requires 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.
- 34) Requires 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.
- a) Allows Delta Plan to include actions outside the Delta that reduce flood risks, and local plans of flood protection.
  - b) Allows Council, in consultation with the Department of Transportation, to address climate change effects on state highways in the Delta in the Delta Plan.
  - c) Allows Council, in consultation with the California Energy Commission, to address the needs of Delta energy development, storage and distribution in the Delta Plan.

35) Requires Delta Plan to meet the following requirements:

- a) Be based on best available scientific information and advice from the Delta Independent Science Board.
- b) Includes quantified targets for achieving the objectives of the Delta Plan.
- c) Utilizes monitoring and analysis to determine progress toward targets.
- d) Describes methods to measure progress.
- e) Includes adaptive management strategy for ecosystem restoration and water management.

36) Requires DWR to prepare proposal to coordinate flood and water supply operations of the State Water Project and Central Valley Project, for Council consideration.

37) Requires Council to consider including the Bay Delta Conservation Plan (BDCP) under certain circumstances, including:

- a) Conditions BDCP incorporation into Delta Plan and state funding for BDCP public benefits on compliance with the Natural Community Conservation Planning (NCCP) Act and California Environmental Quality Act (CEQA).
- b) Requires certain analyses as part of CEQA compliance:
  - i) reasonable range of flow criteria, rates of diversion and other operational criteria required to satisfy NCCP Act.
  - ii) reasonable range of Delta conveyance alternatives, and capacity/design options for a lined canal, an unlined canal, and pipelines.
  - iii) potential effects of climate change on conveyance and habitat restoration activities.
  - iv) potential effects on migratory fish and aquatic resources.
  - v) potential effects on Sacramento River/San Joaquin River flood management.
  - vi) resilience/recovery of conveyance alternatives in event of natural disaster.
  - vii) potential effects of each conveyance alternative on Delta water quality.
- c) Requires Department of Water Resources (DWR) to consult with Council and Science Board during development of BDCP.
- d) Requires Council to have at least one public hearing and incorporate BDCP into Delta Plan if DFG approves BDCP as NCCP.
- e) Requires annual report to Council on BDCP implementation.

- f) Allows Council to make recommendations to BDCP implementing agencies.
- g) Requires BDCP to include a transparent, real-time operational decisionmaking process in which fishery agencies ensure applicable biological performance measures are achieved in a timely manner.
- h) Specifies that BDCP chapter does not amend or create any additional legal obligation or cause of action under NCCP Act or CEQA.

38) Allows Council to incorporate other completed Delta-related plans into Delta Plan.

39) Makes legislative findings regarding the Delta and California water.

40) Conforms certain laws to provide for creation of the Council.

#### EXISTING LAW

- 1) Establishes a Delta Protection Commission and regional conservancies in various regions.
- 2) Establishes water rights and requires SWRCB to administer/enforce surface water rights.
- 3) Requires "urban water suppliers" to prepare urban water management plans that consider water conservation, and conditions state funding on certain urban water conservation measures.
- 4) Required agricultural water suppliers to prepare agricultural water management plans by 1992.
- 5) Federal law requires contractors of the federal Central Valley Project to prepare water conservation plans.
- 6) Establishes California Bay-Delta Authority to oversee implementation of the CALFED Bay-Delta Program, and authorizes more than 200 state and local agencies to govern the Delta.
- 7) Requires the Secretary of the Natural Resources Agency to develop a strategic plan for the Delta, and authorizes various state agencies, including the California Bay-Delta Authority, to implement Delta projects under the CALFED Bay-Delta Program

FISCAL EFFECT: Unknown

COMMENTS: This bill combines the contents of the final conference reports for AB 39 (Huffman), AB 49 (Feuer/Huffman), SB 12 (Simitian), SB 229 (Pavley) and SB 458 (Steinberg). It constitutes a comprehensive package of reforms to California water policy arising out of the recommendations from the "Delta Vision" process. This bill addresses three topics, which are related: Delta governance and planning, statewide water conservation, and SWRCB enforcement of existing water rights laws. This bill, and therefore these comments, are organized by the order the language appears in the Public Resources Code and the Water Code.

## **DELTA PROTECTION COMMISSION & CONSERVANCY**

Delta Protection Commission: This bill makes a limited number of changes to the DPC, making it more clearly a local voice for the Delta in the bill's other fundamental changes to Delta governance (SB 12/Simitian). The key DPC changes include: removing state agency members, DPC development of a Delta economic sustainability plan, its duties as a commenter to the Delta Stewardship Council, and study of expanding the Delta's primary zone where DPC oversees local land-use decisions.

Conservancy Authority: This bill creates the Delta Conservancy as a "state agency to work in collaboration and cooperation with local governments and interested parties." The Legislature created most state conservancies with the primary purpose of conserving, restoring or enhancing natural resources. Delta Vision recommends creation of a conservancy "for implementing and coordinating Delta ecosystem enhancement and related revitalization projects." This bill makes the conservancy "a primary state agency" for ecosystem restoration, but does not set ecosystem restoration as the conservancy's primary mission.

## **WATER LAW ENFORCEMENT TOOLS**

Failing to File: This bill increases consequences for failing to file required reports on water diversion and use, in order to increase compliance. State law has required such reports for decades, but many diverters do not comply, because penalties for non-compliance are minimal. In short, under current law, it may make more economic sense to pay a small fine – if the violator is ever discovered – than file the required reports. The Delta Vision Strategic Plan, while not speaking directly on increased consequences for failing to file required reports, did emphasize the importance of more complete information on water diversion and use.

This bill imposes the consequence of a "rebuttable presumption" that the diversion or use did not occur if there was no report of it occurring. That is, the person who did not file the required reports would be allowed to prove that such diversion or use did occur, but they would have the burden of proof.

The issue of better information on diversion and use is also addressed in AB 900 (De Leon), albeit in a different though complementary way. AB 900 would eliminate a number of current exemptions from filing reports of diversion and use. AB 900 and this bill do not conflict.

Water Rights Enforcement: This bill provides new and increased penalties for violating water rights law and expands SWRCB's authority to enforce existing water rights laws. The bill does not change existing water rights law or expand SWRCB jurisdiction. In effect, these changes would level the playing field to support better enforcement of water rights laws. These penalties have not been increased in decades and fail to reflect the economic value of compliance. In some cases, there is no penalty at all, such as violation of permit terms. While SWRCB may be able to issue a cease-and-desist order, such actions set a high bar for enforcement and fail to recover enforcement costs.

Delta Vision Committee Implementation Report (a.k.a. the Chrisman Report), dated December 31, 2008, while not commenting on this precise set of penalties and enforcement authorities, called for legislation to enhance and expand the SWRCB's water rights administrative

accountability. These recommendations do not adversely affect the current water right priority system, including area-of-origin priorities, but rather strengthen the current administrative system. As the Chrisman Report suggested, "appropriate enforcement will protect existing water rights."

Statutory Adjudication: Currently, SWRCB is authorized to conduct stream adjudications only upon petition. This bill would further authorize SWRCB to conduct such adjudications upon its own motion, after conducting a hearing and finding that such adjudication would be in the public interest. In some situations, when water rights holders seek to avoid any adjudication, the loser is the environment, which may have no advocate for clarifying water rights in the context of protecting the public trust. This provision would allow the SWRCB to identify such a problem and begin the clarification process on its own.

Interim Relief: The bill would authorize SWRCB to require interim remedies as specified, but does not expand SWRCB jurisdiction. SWRCB currently has authority to adjudicate complaints against water diverters, based on the public trust doctrine or the California Constitution's "reasonable use" restrictions (Art X, § 2). Interim remedies are designed to prevent or halt potentially permanent harm while allowing the full evidentiary process to continue. It protects due process and restores the status quo, so that adjudication of the conflict may proceed without further damage to the environment. It again levels the playing field for enforcement of water rights law. This provision is patterned after a preliminary injunction proceeding in court, where the court can stop "irreparable" damage while litigation proceeds. It also allows SWRCB to require a violator to pay the costs of developing sufficient information to resolve the conflict.

Groundwater Monitoring: This bill would establish a statewide groundwater monitoring program to ensure that groundwater elevations in all groundwater basins and subbasins be regularly and systematically monitored locally and that the resulting groundwater information be made readily and widely available.

In the past five years, the Legislature has approved three bills to improve the State's access to groundwater information, but the Governor vetoed all three. In intervening years, groundwater problems have grown worse, largely because California is the last western state without any state groundwater management – and very little information about the conditions of the state's groundwater basins. Excessive pumping in the last century has led to substantial subsidence, as much as 55 feet in some areas. Recently, for example, on the west side of the San Joaquin Valley, where allocations of Delta water from the federal Central Valley Project were minimal, farmers responded by pumping more groundwater. DWR then reported that the State Water Project's canal, which passes through the area on its way south, may suffer cracks because of the high level of pumping and resulting slumping of the ground under the canal.

## WATER CONSERVATION

Urban Water Conservation: This bill would establish a statewide target to reduce urban per capita water use by 20 percent by 2020. This target is consistent with the Governor's February 2008 proposal. The Delta Vision Strategic Plan also recommended legislation requiring "Urban water purveyors to implement measures to achieve a 20 percent reduction in urban per capita water use statewide throughout California by December 31, 2020."



While most interest groups agree with the goal of improving efficient water use and water resources management, there is a dispute as to how best to do so. This bill focuses on achieving the goal by greater water use efficiency – reducing demand. This bill would require urban retail water suppliers, individually or on a regional basis, to develop an urban water use target by December 31, 2010, would require each urban water supplier to meet their target by 2020, and to meet an interim target (half of their 2020 target) by 2015. This bill is "performance-based" – setting the standard and requiring local agencies to determine how best to achieve that standard, which is a concept that DWR Director Lester Snow has described favorably.

Flexibility. This bill provides options for how water agencies can achieve higher levels of water conservation but requires those options to meet a per capita reduction in water use. The bill sets the “20 by 2020” target (and the interim 2015 target) for the entire state and then allows water agencies to choose one of three methods for determining their own water-use target for 2020. Water suppliers also can choose to join with a broader group of suppliers to meet the targets regionally. Finally the bill provides urban water suppliers with the option of shifting more water use to recycled water to meet their targets.

Commercial, Industrial and Institutional (CII) Water Management: AB 49 restricts urban water suppliers from imposing conservation requirements on process water. While this addressed some CII water user concerns other CII interest groups still have concerns that the process water protections in the bill do not go far enough to protect CII from water conservation requirements. They assert that existing law, Water Code Section 375, which provides broad authority for water agencies to implement water conservation programs and adopt regulations, is sufficient. This bill was not intended to weaken urban water agencies broad authorities under existing law, but to motivate advancement of reasonable and equitable conservation measures. The Legislature may consider revisiting the process water restriction in future legislation if urban water suppliers take actions that violate those restrictions.

Other sections address other CII concerns, including requiring urban water suppliers to avoid disproportionate impacts on any one sector and requiring an open transparent process for all water customers to review and provide input into the water supplier implementation plan. There are also no mandated conservation requirements or targets in the bill for CII. One of the options for a supplier to develop a water use target includes a methodology for estimating reductions in each sector – which includes a 10% reduction in CII. This 10% reduction is part of the target development and does not dictate the method of implementing or meeting the target.

Agricultural Water Management: For agriculture, this bill relies on implementation of efficient water management practices (EWMPs) for water use, which have been developed, at least in part, by the Agricultural Water Management Council (AWMC). The bill creates two EWMP categories: “critical” that all agricultural water suppliers (*i.e.* water management services and pricing structures) must implement and “additional” EWMPs that must be implemented if the measures are locally cost effective and technically feasible. The mandatory EWMPs are the same 6 measures currently required of all federal water contractors (*e.g.* Westlands WD and Friant WA) since 1992 under the Central Valley Project Improvement Act (CVPIA).

Agricultural Water Management Plans: This bill reauthorizes dormant provisions of the Water Code that required agricultural water suppliers to prepare agricultural water management plans. This places agricultural water suppliers on an equal footing with urban suppliers who have been required to prepare and submit water management plans for approximately 15 years. The

Legislature previously approved this concept in three bills by former Senator Kuehl (2005-07). Although the Governor vetoed those bills, his reasons were not related to this concept.

One key difference between this bill, the dormant provisions of current law, and previous years' bills is the definition of "agricultural water suppliers" – the agencies that would be required to comply with these provisions. This bill defines agricultural water suppliers as those with 10,000 acres of irrigated land. The previous definition was a supplier providing more than 50,000 acre-feet of water for agricultural purposes. The definition for federal water contractors served by the Central Valley Project is 2,000 acres or acre-feet served. Agricultural interests oppose the lower threshold of 2,000 stating that Bureau of Reclamation essentially does all the work for those smaller agencies. The definition of "urban water supplier" puts the threshold at 3000 connections or 3000 acre-feet of deliveries. Previous years' bills provided for DWR to determine the appropriate threshold for imposing requirements.

Sustainable Water Management: One of the tensions among different interest groups is whether the water use efficiency program should include both demand reduction and increased water supplies and what type of mandates or incentives should be used to motivate compliance. This bill begins to address those tensions by requiring DWR to develop incentives for sustainable water management and alternative water supplies such as brackish water desalination and stormwater recovery.

## **THE DELTA**

For several years, the Delta has suffered a crisis – ecosystem, water supply, levee stability, water quality, policy, program, and litigation. In June 2004, a privately owned levee failed and the State spent nearly \$100 million to fix it and save an island whose property value was far less. In August 2005, the Department of Fish & Game (DFG) reported a trend showing severe decline in the Delta fishery. In 2006, the Legislature reorganized Delta programs and funding under the Resources Agency Secretary. In 2007, a federal judge, acting under the federal Endangered Species Act, declared illegal certain federal biological opinions about near-extinct fish and restricted water exports from the Delta, to the San Francisco Bay Area, the San Joaquin Valley and Southern California. The Governor shortly thereafter called the Legislature into an extraordinary session on water.

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) of 2006 required a cabinet committee to present recommendations for a Delta 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 the recommendations to the Legislature on January 3, 2009. This year, the Legislature held numerous hearings on Delta Vision and a set of five bills, including this one. In August, policy committees in both houses held hearings on the topics in these bills, and considered "pre-print" versions. Conference Committee substantially amended the pre-prints.

Legal Framework for Delta: Since statehood, California has asked much of the Delta. Conflicting demands have led to crisis and conflict – between and among agencies, stakeholders and natural resources. The Delta Vision process spent more than 18 months, investigating the Delta, engaging agencies and stakeholders, and thinking carefully about the Delta's challenges



and prospects for change. The Task Force's first recommendation was to change the fundamental legal framework for the State to make decisions as to its activities in the Delta – encapsulated in two "coequal goals" of "restoring the Delta ecosystem and creating a more reliable water supply for California." This bill sets a new legal and governance framework for the Delta's future, explicitly stating for the first time how the state should approach resolving the inherent conflicts in managing Delta resources. This framework includes legislative findings, policies and definitions, which provides the foundation for new governance in the Delta.

Protection for Existing Law: When the August pre-print versions of the Delta bills came out, some questioned whether the Delta bills would change existing legal protections for water rights/quality and the environment. This bill includes a "savings" section that protects certain statutes, water rights and other legal protections from any implied changes by this bill.

Early Actions: This bill identifies a series of actions that existing and new agencies need to take as soon as possible – before the Council completes its new Delta Plan. Some actions are administrative. Others are substantive projects for the Delta ecosystem and/or water supply reliability. The early actions part communicates the urgency of responding to the Delta crisis, without waiting for the completion of the new Delta plan.

Council Membership: The foundation of this bill's change is the new Delta Stewardship Council, which this bill creates with seven members. Council members would be required to possess diverse expertise and reflect a statewide perspective. However, this bill would also designate the chair of the Delta Protection Commission as a voting member of the Council *ex officio*.

Delta Vision suggested the Council should have no slots set aside for persons with specific characteristics, all appointed by the governor. Others suggest that there must be slots for persons with specific characteristics, such as representation or expertise. This bill appears to be a hybrid of the two approaches, with membership appointed by several different entities and one regional representative from the Delta, but no other specified slots. This approach relies on the Senate confirmation process to ensure the Governor's appointments fairly balance different interests and reflect different expertise. This bill provides the Senate and Assembly an additional method to ensure balance, at least from the Senate and Assembly's perspectives, by allowing each to appoint a member.

Delta Water Master: This bill includes a provision that requires SWRCB to appoint a Delta Watermaster. This version, however, is much narrower than the proposal in the August pre-print version, which had broader authority. The Watermaster in this bill acts by delegation of authority from the SWRCB. It is the enforcement officer for the board, with specified delegated authorities. This version also narrows its geographic jurisdiction to the Delta.

Science Board/Program: This bill establishes a Science Board as well as a science program under the leadership of a Lead Scientist. This language was developed in cooperation with Professor Jeff Mount, former chair of the CALFED Independent Science Board.

Federal Government Participation: In order to encourage federal government participation under the State's leadership, AB 39 requires the Delta Plan to be developed consistent with certain statutes that allow for certain state discretion over federal activities. These statutes include the Coastal Zone Management Act (CZMA), the Reclamation Act of 1902 (which governs the Bureau of Reclamation's Central Valley Project), and the Clean Water Act. If the

Council decides to adopt the Delta Plan pursuant to the CZMA, then the bill requires submission to the Secretary of Commerce for approval, so the State may exercise certain authority over federal agency actions. It is widely anticipated that California may need Congress to enact laws to protect the Delta consistent with the State's plan – perhaps a "Delta Zone Management Act." This bill allows for that eventuality, by providing for submission of the Delta Plan to whatever federal official a subsequent federal statute identifies.

Delta Plan/Balancing Coequal Goals: Recent amendments added substantive detail as to the nature of the Delta Plan, focusing on balancing the two coequal goals of ecosystem restoration and water supply reliability. The amendments to the pre-print versions of the predecessor bills narrowed the focus of the ecosystem restoration to the Delta, and not its entire watershed, and eliminated authority of the Council to direct other state agencies to contribute to the Delta Plan.

Levees/Flood Protection: The bill requires the Delta Plan to reduce risks to people, property and state interests in the Delta with emergency preparedness, appropriate land uses and strategic levee investments. The Delta Plan will include recommendations for priorities for state investments in levees. These recommendations, in combination with the Council's authority to ensure that state agencies act consistently with the Delta Plan (in SB 12), will ensure that levee spending by DWR and the Central Valley Flood Protection Board (CVFPB) reflects these priorities. The Legislature generally does not appropriate funding to specific Delta levee projects, and has not succeeded in imposing priorities on state levee spending in the Delta. Instead, the State Budget leaves the discretion to DWR and the CVFPB to determine how to spend state money on both levees in the State Plan of Flood Control and non-project levees. These priorities will affect both the Delta levee subvention program (non-project levees) and the special projects program (levees with a State interest).

Bay Delta Conservation Plan: This bill conditions State funding and incorporation of BDCP into the larger Delta Plan on its approval as a Natural Community Conservation Plan by DFG and completion of robust investigation and analysis pursuant to CEQA. While some agencies have asserted that BDCP would be an NCCP, the December 2006 planning agreement specifically provided that the signatories were not committed to achieving the higher standard for an NCCP under state Endangered Species Act. This bill sets the higher NCCP standard ("the gold standard") as the threshold for state funding of the public benefits of BDCP activities, which is a significant step forward, while relying on existing law. The specified issues that will be analyzed under CEQA also add credibility to the outcome of BDCP, but also rely on the context of existing CEQA law.

#### REGISTERED SUPPORT / OPPOSITION:

##### Support

Audubon California  
CA Water Association  
Defenders of Wildlife  
Environmental Defense Fund  
Metropolitan Water District of So. Cal.  
Natural Resources Defense Council

Pacific Coast Fed. of Fishermen's Ass'ns  
State Building & Construction Trades  
Council of CA  
The Bay Institute  
The Nature Conservancy

Opposition

CA Central Valley Flood Control Ass'n  
City of Sacramento  
Contra Costa County  
Desert Water Agency  
East Valley Water District  
El Dorado Irrigation District  
Newhall County Water District  
Reclamation District No. 2068  
Regional Council of Rural Counties

Sacramento Area Council of Governments  
Sacramento County  
Sacramento Reg. County Sanitation Dist.  
San Joaquin County  
Sierra Club California  
Solano County  
Valley Ag Water Coalition  
Yolo County

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096



## California State Legislature

# THE 2009 DELTA & WATER LEGISLATION Legislative History

- II. Delta Legislation – SB 1 (Simitian)
  - A. Historical Background & Development
    - 1. Delta Informational Hearings (2005-2008)
    - 2. Delta Vision
  - B. Delta Governance
    - 1. Bay-Delta Interim Governance Act of 2009 – SB 229 (Pavley)
    - 2. Delta Protection Commission Reform – SB 458 (Wolk)
    - 3. Delta Conservancy – SB 457 (Wolk)
    - 4. Delta Stewardship Council – SB 12 (Simitian)
  - C. Delta Plan – AB 39
  - D. Development of Delta Legislation
  - E. Final Outcome: SB 1 (Simitian)

**INFORMATIONAL HEARING:  
Delta Ecosystem Crisis**

**Upon Adjournment of Floor Session  
Thursday, August 18, 2005  
State Capitol, Room 437**

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**A G E N D A**

- I. INTRODUCTIONS**
- II. DEPARTMENT OF FISH & GAME SCIENTIFIC PRESENTATION**
- III. GOVERNOR SCHWARZENEGGER ADMINISTRATION PANEL**
  - A. Resources Agency
    - 1. Department of Fish & Game
    - 2. Department of Water Resources
    - 3. California Bay-Delta Authority
    - 4. Department of Boating & Waterways
  - B. California Environmental Protection Agency
    - 1. State Water Resources Control Board
    - 2. Department of Pesticide Regulation
  - C. Department of Food & Agriculture
- IV. INDEPENDENT SCIENTIST PANEL**
  - A. Dr. Peter Moyle, University of California, Davis
  - B. Dr. Tina Swanson, Bay Institute
  - C. B.J. Miller, Consulting Engineer
- V. PUBLIC COMMENT**

**\*PUBLIC COMMENT MAY BE SUBJECT TO TIME LIMITS\***

**Joint Oversight Hearing  
Assembly Committee on Water, Parks and Wildlife  
Assembly Budget Subcommittee No. 3 on Resources**

**Assemblymembers Wolk and Pavley, Chairs**

***CALFED Bay-Delta Program:  
Assessing the Past, Financing the Future***

**A G E N D A**

March 9, 2005  
9:00 a.m. – Room 437

- 1) Welcome and Introductions**
- 2) Legislative Analyst's Office Presentation** *(20 minutes)*
- 3) Administration Panel** *(1 hour)*
  - a) Lester Snow (Department of Water Resources)
  - b) Patrick Wright (California Bay-Delta Authority)
  - c) Ryan Broddrick (Department of Fish & Game)
- 4) Water Community Panel** *(1 hour)*
  - a) Brent Walthall (Kern County Water Agency)
  - b) David Guy (Northern California Water Association)
  - c) Randy Kanouse (East Bay MUD)
  - d) Barry Nelson (Natural Resources Defense Council)
  - e) Tim Quinn (Metropolitan Water District of Southern California)
  - f) David B. Okita (Solano County Water Agency)
- 5) Public Comment**

**California State Assembly  
Joint Oversight Hearing  
Budget Subcommittee No. 3 on Resources  
and Committee on Water, Parks and Wildlife**

***CALFED Bay-Delta Program:  
Assessing the Past, Financing the Future***

The Legislative Analyst's recent *Perspectives and Issues* regarding the 2005-06 State Budget observed that "CALFED is at a funding crossroads." Five years ago, the State and the Federal Government adopted a Record of Decision outlining a 30-year program for protecting the Sacramento-San Joaquin River Delta (Delta). Since then, the State's fiscal circumstances have changed substantially. On the federal side, Congress passed an authorization for CALFED programs and appropriations last year, but has not actually appropriated any new federal funding. This year, the State bond funds on which CALFED has relied for the last four years are approaching depletion.

The cost side of this equation also has changed. Some projects that have been studied for the last four years may proceed to implementation, requiring substantial new investments. Last year's Jones Tract levee break in the Delta highlighted the costs of maintaining the Delta as the figurative and literal heart of California's water system. The California Bay-Delta Authority recently adopted a 10-year Finance Plan, which many water community stakeholders find objectionable for one reason or another. This hearing provides the Assembly with the opportunity to encourage State agencies and stakeholders to move toward a new understanding as to how to pay for the important water infrastructure needed for the State's future.

**Policy Issues.** The California Bay-Delta Authority's adoption of its finance plan and the subsequent reactions and developments have raised a number of issues that the Legislature may need to address, at some point.

- **Funding Targets.** The LAO calls the Finance Plan's funding targets "unrealistic," and stakeholders across the spectrum have criticized them as well, either for their assuming higher Federal and State funding or for aiming too high. How should targets be prioritized?
- **Beneficiary Pays.** CALFED has long claimed to follow the principle of "beneficiary pays," or the beneficiary of a CALFED project is expected to pay for the project to the extent it benefits. This principle, however, has not been fully implemented, primarily due to the availability of Federal and State/bond funding. Addressing this concept will require consideration of the standards, determinations and administration of "beneficiary pays."
- **CALFED and Broader Water Resource Needs.** CALFED is not the only State program addressing California's water infrastructure needs. The Department of Water Resources has started exploring the possibility of a "Water Infrastructure Investment Fund."



- **Linkages To Regulatory Assurances.** Numerous stakeholders have linked their willingness to contribute to CALFED's funding needs to regulatory assurances limiting further regulatory demands for water contributions.
- **Quantifying Achievements.** It is not uncommon to hear questions as to how the State should quantify CALFED achievements. In answering this question, the State's success in avoiding conflict, particularly during the recent dry years, should be considered.
- **Plan vs. Pieces.** Two years ago, the Legislature requested that the Administration propose a water user fee. The CALFED Finance Plan proposes legislative adoption of the Ecosystem Restoration Program fee this year, when it is unlikely that the State will be prepared to adopt an overall finance plan. Is a complete plan required before adoption of a water user fee?
- **2005-06 Budget.** The Senate has proposed zeroing out the CALFED budget for 2005-06, until all the Finance Plan's financial and technical issues can be resolved.
- **Flood Control and Levees.** After the 2003 Paterno decision and the 2004 Jones Tract levee break, the financial risks of failing to maintain the Central Valley flood management system, particularly the Delta's levees, has become more apparent.
- **Expanded Delta Use/"8500."** The State and Federal Government have been discussing increasing the authorization of SWP's pumping capacity at the Banks Pumping Plant in the Delta to 8500 cfs. This expansion would be linked to a Delta improvements package to protect other beneficial uses of Delta water.
- **Role of the Legislature.** CALFED has often been described as a "process," rather than a program that is directed by the Governor and Legislature. Decisions are made collaboratively with State and Federal agencies and Stakeholders. While the Program has identified problems (or "stressors" on the Delta) and includes objectives, neither the CBDA nor the State agencies necessarily direct all the programs to address those problems and objectives. Much of the funding is disbursed through grants to State and local agencies or non-profit organizations. This process does not follow the traditional path where the Legislature directs specifically how such funding is used, subject to the Governor's veto. By involving stakeholders in decisions, CALFED has been able to minimize conflict over the direction of its programs.
- **Organization.** The State created the California Bay-Delta Authority in 2002, and the Federal Government authorized limited federal agency participation last year. The nature of the CBDA's coordination responsibility and the majority of its stakeholder (*i.e.* non-agency) voting members may require some examination.
- **Fees vs. Taxes.** Agencies and stakeholders have identified a wide range of funding options for CALFED. Discussion as to whether these options constitute fees or taxes will be required as part of a final resolution of the CALFED funding issues.

In preparation for this first Assembly hearing on CALFED for the 2005-06 Legislature, this paper provides a complete background on CALFED's history and finance. While this hearing focuses on future CALFED funding, assessing the Program's success is a critical element in determining the necessity for additional and/or new funding. A decade has passed since the Bay-Delta Accord, and both the State and the Federal Government have accomplished substantial progress in addressing the Delta's long-term needs. The California Bay-Delta Authority has prepared the analysis contained in Appendix A to assist the Assembly in its assessment of CALFED's progress.



## **I. Background/History**

### **A. Sacramento-San Joaquin Delta To 2000**

California has encountered conflict in the Delta for decades. Disputes between the Delta and upstream water users date back at least to the 1920's. In the 1930's, the Federal Government began building the Central Valley Project (CVP), which was based on a State plan adopted by the Legislature in 1933. In the 1960's, the State worked through the conflicts arising out of the State's development of the State Water Project's reliance on the Delta to transfer water from north to south. In the 1970's, conflict over the infamous "Peripheral Canal" led to a 1982 referendum where voters defeated the State's plans. In 1986, a California court ruled that the State Water Resources Control Board (SWRCB) must consider water use throughout the Delta's Central Valley watershed – not just the State and Federal water export projects – in developing Delta water quality standards. United States v. SWRCB, 182 Cal.App.3d 82 (1986).

Between 1987 and 1994, California suffered its worse drought in history. The water supply dropped considerably, with the SWP agricultural contractors suffering a year with zero SWP deliveries. Fish populations, particularly salmon, also declined precipitously. In 1991, USEPA formally rejected the State's Delta water quality standards, which the California court had found insufficient in 1986. In December 1992, the SWRCB issued new draft Delta water quality standards, which included a controversial proposal for a Delta water quality assessment on Central Valley water users. At Governor Wilson's request, the SWRCB withdrew its draft decision in April 1993.

The drought also led to increasing conflict over protection of fish listed as threatened or endangered pursuant to the Federal and State Endangered Species Acts (ESA). During the 1992-94 period, the SWP and CVP reduced pumping to address the needs of winter-run Chinook salmon and delta smelt, particularly when the export pumps were destroying significant numbers of such fish. (These reductions provided the basis for the recent Federal Government settlement of the Tulare litigation.) After some period of State-Federal conflict over ESA protections and Delta water quality, the State and the Federal Government began working together and with water community stakeholders (urban, agriculture and environmental) to develop new Delta water quality standards that protected fish at risk of extinction. These negotiations led to the December 1994 "Bay-Delta Accord" (or simply "the Accord").

The following year, the SWRCB adopted the 1995 Delta Water Quality Control Plan (1995 WQCP), based on the agreements reached in the Accord. State and Federal agencies also began development of plans for long-term improvements in the Delta, under the umbrella of the "CALFED Bay-Delta Program." In 1996, Congress authorized federal agency participation in plan development and \$435 million in appropriations over three years. (Actual appropriations from this authorization, however, totaled only \$220 million, primarily for Delta ecosystem restoration.) That same year, California voters passed a water bond providing \$995 million in state bond funds for water projects, including \$390 million specifically for CALFED ecosystem restoration. In Summer 1999, the CALFED Bay-Delta Program issued a revised draft EIS/EIR outlining a 30-year program. During this same period, the SWRCB began formal hearings to determine how to implement the 1995 WQCP, which resulted in the 2000 Decision 1641 (D-1641) that remains in litigation in the California Court of Appeals. That same year, Governor Davis' office and the Secretary of the Interior negotiated a framework for implementing the

CALFED program. The two governments thereafter issued a final EIR/EIS and an August 28, 2000, Record of Decision (ROD) agreeing to implement the Program, as reflected in the framework.

## **B. CALFED Bay-Delta Program Objectives**

The August 2000 ROD established a sweeping program to address issues throughout the Delta's Central Valley watershed and in the areas (including Southern California) that depend on the Delta for reliable, high-quality water. This program aimed at four primary objectives for CALFED and the Delta:

1. Water Supply Reliability
2. Ecosystem Restoration
3. Water Quality
4. Levee System Integrity

In order to achieve these objectives, CALFED began implementing 11 programs (as reflected in the CALFED website, [www.calwater.ca.gov](http://www.calwater.ca.gov)): water management, storage, conveyance, water use efficiency, ecosystem restoration, water transfers, environmental water account (EWA), drinking water quality, levee system integrity, watershed management, and science. The ROD also provided for certain regulatory commitments for water supply reliability to the export water users based, in large part, on operation of the EWA and implementation of the Ecosystem Restoration Program (ERP).

The CALFED ROD also adopted "solution principles" for any CALFED solution. Some of those principles are particularly relevant to finance plan deliberations, including:

- **Be equitable.** Solutions will focus on solving problems in all problem areas. Improvements for some will not be made without corresponding improvements for others.
- **Be affordable.** Solutions will be implementable and maintainable within the foreseeable resources of the program and stakeholders.
- **Be durable.** Solutions will have political and economic staying power and will sustain the resources they were designed to protect and enhance.

In 2002, the Legislature authorized creation of the California Bay-Delta Authority (CBDA), which includes members from State and Federal agencies and water community stakeholders. The CBDA coordinates and oversees the activities of the State agencies that actually carry out the Program's activities. In 2004, Congress authorized federal agencies to participate and implement various aspects of the CALFED Program, in concert with the State.

## **C. Program Finance History Since 2000**

The 2000 ROD envisioned a program with substantial Federal and State funding, but with some contributions from local communities and water users. Since then, as fiscal and political circumstances have changed, federal and State funding has been more limited. Federal appropriators have been unwilling to fund programs that lacked Congressional authority, which CALFED did not receive until Fall 2004. State funding has relied in large part on water bond funding, particularly Propositions 13 and 50 approved in 2000 and 2002, respectively.

The State Budgets for the last five years have included substantial CALFED funding. In fact, State funding has provided the bulk of the Program's funding, as reflected in Figure 7 from LAO's *Perspectives and Issues*:

**Figure 7**

**CALFED Funding, by Source**

2000-01 Through 2004-05  
(In Millions)

Year	State Funds	Federal Funds	Local/User Funds <sup>a</sup>	Total Funding
2000-01	\$320.3	\$53.1	\$125.2	\$498.6
2001-02	416.0	67.8	138.0	621.8
2002-03	276.1	45.1	154.5	475.7
2003-04	471.2	40.3	228.7	740.2
2004-05	368.4	35.3	509.1	912.8
<b>Totals</b>	<b>\$1,852.0</b>	<b>\$241.6</b>	<b>\$1,155.5</b>	<b>\$3,249.1</b>

<sup>a</sup> Includes revenues from Central Valley Project Improvement Act Restoration Fund (funded by water users), State Water Project contractor revenues, and local matching funds mainly for water recycling grants. There is additional local funding of an unknown amount that supports CALFED objectives, but is not currently tracked by the California Bay-Delta Authority unless it is in the form of matching funds.

## II. CALFED Finance Plan

In addition to the substantial federal and State appropriations, the 2000 CALFED ROD proposed a broad water user fee to pay for some parts of the Program. The 2000 implementation plan anticipated that the CALFED agencies would finalize cost-sharing agreements within the first two years of the program (by 2002), but these agreements never materialized. The 2003/04 budget bill for the CBDA included the following provision:

*It is the intent of the Legislature that the California Bay-Delta Authority submit a broad-based Bay-Delta user fee proposal for inclusion in the 2004-05 Governor's Budget, consistent with the beneficiary-pays principle specified in the CALFED Record of Decision.*

The CBDA never submitted such a proposal for the 2004-05 Budget. Last year, a draft Conference Report on the 2004-05 Budget included language authorizing imposition of a water user fee to fund CALFED activities. When water user opposition arose, that language was removed. During the last two years, CBDA has carried out a planning process to develop a broader Finance Plan, including consideration of water user fees.

### A. California Bay-Delta Authority Finance Plan Development

Over the last two years, CBDA has used a stakeholder process to develop a 10-year Finance Plan, which the CBDA adopted in December 2004. The CBDA used a four-phased approach to developing the Finance Plan. This process included contributions from CBDA staff and consultants, an independent panel of experts, legislative and stakeholder representatives, public interest groups and the CBDA board.

The first step in developing the Finance Plan was to develop the funding targets. The CBDA technical team worked with CALFED program managers to identify specific programs or projects likely to be implemented over the next ten years as part of the CALFED Bay-Delta Program. In developing funding targets for the Finance Plan, the CBDA technical team reviewed and updated the funding targets originally included in the CALFED ROD. The funding targets do not include assumptions about inflation and are valued in current dollars.

The CBDA technical team reviewed and updated the ROD funding targets based on a review of several factors:

- Program actions needed to meet program objectives,
- Program priorities, and
- Revised schedules.

The various Bay-Delta Program Advisory Committee (BDPAC) subcommittees reviewed and revised the funding targets for each program independent of each other. That is, in general there was no systematic evaluation of funding targets across all program areas. The notable exception is for those activities that are a part of the Delta Improvement Package – those activities were coordinated across program areas. In several cases (notably the water conservation and ecosystem programs) a “budget constrained” funding target was developed to reflect the fiscal realities expected in the next five to 10 years.

## **B. CBDA Finance Plan**

The "CALFED Bay-Delta Program Finance Plan," as adopted by CBDA in December, which is available at [http://calwater.ca.gov/FinancePlanning/CBDA\\_Final\\_Finance\\_Plan\\_1-23-05.pdf](http://calwater.ca.gov/FinancePlanning/CBDA_Final_Finance_Plan_1-23-05.pdf), sets out a ten-year, \$8.1 billion spending program to be funded as follows:

- |       |                   |       |                  |
|-------|-------------------|-------|------------------|
| • 30% | State Taxpayers   | • 9%  | Water Users      |
| • 21% | Federal Taxpayers | • 40% | Grant Recipients |

The Finance Plan includes an executive summary and summaries of the finance plan for each Program element. In addition to its funding targets and options, the Finance Plan restates several financial principles, including support for CALFED solution principles and a "benefits-based approach." It also has identified a number of "major issues":

- water user contributions
- likelihood of increased federal share
- significant reliance on new State funding in FY 2006-07
- assurances to avoid redirection of funds

The following chart shows, in summary form, the CALFED Finance Plan funding targets by program element, with allocations among the contributing funding sources:

## 10-Year Funding Allocations by Beneficiary (\$ in millions)

Program Element	Funding Target	State Gov't	Federal Gov't	Water Users	Local Match	Total Funding
Ecosystem Restoration	\$1,500	\$542	\$408	\$400	\$150	\$1,500
Environmental Water Account	\$438	\$180	\$135	\$123		\$438
Water Use Efficiency	\$3,153	\$575	\$530		\$2,048	\$3,153
Water Transfers	\$6	\$6				\$6
Watershed	\$423	\$196	\$161		\$66	\$423
Water Quality	\$276	\$81	\$72	\$17	\$105	\$276
Levees	\$446	\$186	\$175	\$32	\$53	\$446
Storage	\$1,087	\$292	\$36	\$9	\$750	\$1,087
Conveyance	\$185	\$109	\$6	\$71		\$185
Science	\$437	\$167	\$151	\$108	\$11	\$437
Oversight & Coordination	\$121	\$75	\$46			\$121
<b>TOTAL Dollars</b>	<b>\$8,073</b>	<b>\$2,408</b>	<b>\$1,722</b>	<b>\$760</b>	<b>\$3,183</b>	<b>\$8,073</b>
<b>TOTAL Percentage</b>	<b>100%</b>	<b>30%</b>	<b>21%</b>	<b>9%</b>	<b>40%</b>	<b>100%</b>

**Deficit.** The revenues currently identified for these programs only total \$1.8 billion, through a combination of Proposition 13 and Proposition 50 bond monies, previously appropriated federal funds, CVP Restoration Funds, and committed matching funds. The deficit of \$6.3 billion is proposed to be funded as follows:

\$1.5 bil.	State taxpayers,
1.7 bil.	Federal taxpayers,
0.5 bil.	Water users, and
2.6 bil.	Grant recipients.

Though neither highlighted nor included in the Finance Plan, there are up to \$8.0 billion in additional potential programs and projects. These potential actions include major surface storage, conveyance facilities, water quality programs, and levee projects. The CBDA staff is

now developing options for erasing the deficit. These options focus chiefly on raising additional revenues.

### C. Recent Developments

Since the CBDA adopted the Finance Plan, several developments have occurred. First, the Governor's 2005-06 Budget Summary included the following provision:

*The Bay-Delta Authority will work with water users, local water agencies, environmental advocates, and other stakeholders to develop a plan for how the non-State and federal share will be financed. The plan will be incorporated in the Governor's May Revision.*

The Governor's proposed budget included allocations for continued CALFED programs, using primarily bond funds. Figure 8 from LAO's *Perspectives and Issues* (below) provides a comparison of CALFED spending between the current fiscal year and the proposed budget:

<b>Figure 8</b>		
<b>CALFED Expenditures—State Funds Only</b>		
<i>(In Millions)</i>		
<b>Expenditures by Program Element</b>	<b>2004-05</b>	<b>Proposed 2005-06</b>
Ecosystem restoration	\$101.0	\$30.5
Environmental Water Account	32.5	18.1
Water use efficiency	35.6	75.8
Water transfers	0.6	0.6
Watershed management	28.7	5.8
Drinking water quality	17.5	2.6
Levees	21.8	19.1
Water storage	92.4	17.3
Water conveyance	36.7	44.7
Science	21.9	9.7
Water supply reliability <sup>a</sup>	1.8	8.9
CALFED program management	7.4	7.5
<b>Totals</b>	<b>\$397.9</b>	<b>\$240.6</b>
<b>Expenditures by Department</b>		
Water Resources	\$263.8	\$203.1
California Bay-Delta Authority	31.1	19.7
State Water Resources Control Board	24.1	8.5
Fish and Game	75.2	5.7
Conservation	3.3	3.3
Forestry and Fire Protection	0.3	0.2
San Francisco Bay Conservation And Development Commission	0.1	0.1
<b>Totals</b>	<b>\$397.9</b>	<b>\$240.6</b>

<b>Expenditures by Fund Source</b>		
Proposition 50	\$194.4	\$137.3
Proposition 13	147.9	57.1
Proposition 204	1.6	6.6
General Fund	11.9	12.0
State Water Project funds	40.0	25.4
Other state funds	2.1	2.2
<b>Totals</b>	<b>\$397.9</b>	<b>\$240.6</b>
<sup>a</sup> Could include conveyance, water storage, water use efficiency, water transfers, and Environmental Water Account expenditures. Source: Legislative Analyst's Office, "Perspectives and Issues"		

Second, President Bush issued his proposed budget, which included \$81 million for CALFED programs and an additional \$126 million for related programs, such as Army Corps of Engineers flood control projects in the Central Valley, which do not go through "the CALFED process." This proposal reflects an increase from the \$59.2 million in this year's federal budget, but is less than the \$100 million that Governor Schwarzenegger requested.

Third, the CBDA heard numerous stakeholders speak at its February meeting in opposition to various Finance Plan provisions, particularly the proposals for water user fees. Some suggested that the State needed to provide regulatory assurances or receive other benefits before they were willing to pay for CALFED. Others also suggested that the targets were too high.

Fourth, the Senate Natural Resources and Water Committee held a February informational hearing on the CALFED Finance Plan, and heard opposition. After the hearing, the chair, vice-chair and water subcommittee chair signed a letter stating a number of principles that must be addressed by CALFED's Finance Plan. In short form, those principles assert that the finance plan must be: 1) a complete package; 2) established in statute; and 3) acceptable by all interest groups.

Fifth, Lester Snow, Director of the Department of Water Resources, has begun discussions with stakeholders on several topics related to water finance, including regulatory assurances, a water infrastructure investment fund and water user fees.

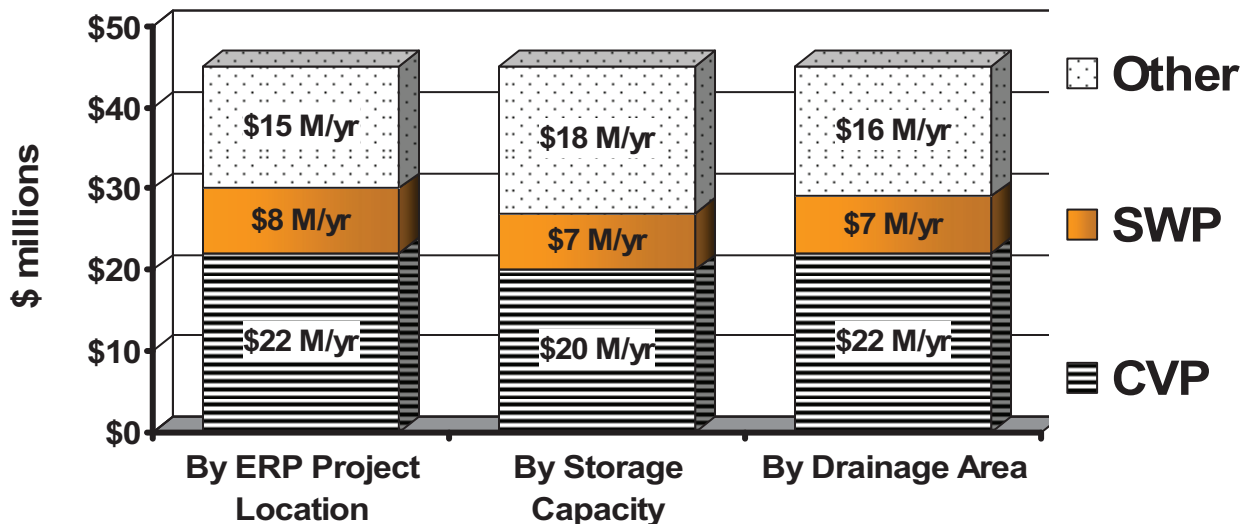
#### **D. Summary of Water Community Positions**

Considering the recent developments, numerous participants in the CALFED process have taken positions, at least in some general way, as to how to pay for the CALFED program in the years ahead. The descriptions below briefly summarize certain parties' positions, but should not be considered comprehensive. You may wish to inquire further as to the positions of those parties appearing at the hearing.

- **Department of Water Resource:** DWR's position, as reflected in the Governor's budget, provides for continued CALFED funding from bond funds.
- **Metropolitan Water District of So. Cal.:** MWD has analyzed the entire CALFED program and identified particular parts for which it would consider contributions. For



example, MWD has presented the following graph to reflect its proposed allocation of costs for the Ecosystem Restoration Program among water users:



- **East Bay MUD/NRDC/SF Public Utilities Commission, et al.:** This coalition of non-export water agencies and environmental groups oppose MWD's proposal for allocating costs among water users. Instead, they propose a formal adjudication process to determine the appropriate share for each beneficiary to pay for each CALFED project.
- **California Urban Water Agencies:** CUWA has adopted a set of principles that urges prioritization of CALFED expenditures, but does not suggest any specific priority. The principles also emphasize current CALFED principles regarding "beneficiaries pay" and balance of program objectives.
- **Northern California Water Association.** NCWA has suggested that Northern California has contributed its water and paid a significant share of the costs of CALFED-related projects, such as fish screens on the Sacramento River.
- **Natural Resources Defense Council.** NRDC believes that the CALFED Finance Plan's revenue estimates are inflated. It also advocates strict adherence to the "beneficiary pays" concept, including a careful and open process for determining benefits.
- **Contra Costa Water District:** CCWD has proposed reprogramming of certain bond funds to accomplish the projects that it considers most important for the next four years.
- **Planning and Conservation League:** PCL has submitted an "Investment Strategy for California Water" that emphasizes water conservation, recycled water and groundwater treatment and desalination. It opposes any further expansion of Delta exports.
- **Placer County Water Agency:** PCWA denies that it benefits from CALFED and supports a public review of the benefit determination that is "judicially reviewable." It also supports "broad statewide support for CALFED programs."
- **Central Delta Water Agency:** CDWA has asserted that California law now requires that the SWP and CVP export water users must first assume financial responsibility for all mitigation in the Delta, before others pay for Delta improvements.



## Appendix A

### **CBDA Assessment of CALFED Achievements and Challenges**

In 2004, the Bay-Delta Authority achieved several important milestones:

- After several years of debate, Congress passed legislation authorizing federal participation in the Authority and \$389 million for key program elements over the next six years.
- The Authority adopted a long-term finance plan to serve as the framework for investment decisions in water infrastructure and the environment.
- The Authority adopted the Delta Improvements Package, an integrated set of schedules and actions to ensure that water supply reliability, water quality, and environmental improvements in the Delta move forward in a balanced manner.
- For the fourth consecutive year, the CALFED agencies provided increased flows for threatened and endangered fish through an innovative Environmental Water Account, while also providing regulatory commitments to the state and federal water projects that their supplies would not be interrupted during the year.
- Based on the recommendations of independent panels of national experts, the Authority adopted a comprehensive mercury strategy and a blueprint for improving water measurement and reporting urban and agricultural water supplies.
- And finally, CALFED agencies invested more than \$1.6 billion in local communities to meet the water supply, water quality, levee stability, and environmental goals of the Program.

#### **Ecosystem Restoration**

**Ecosystem Restoration** – Since its inception seven years ago, the Ecosystem Restoration Program has made significant improvements in the habitats and species associated with the Bay-Delta and its watersheds. The CALFED agencies have:

- Invested more than \$500 million on 415 projects aimed at improving and restoring ecosystems.
- Worked with the Science Program to complete the “Mercury Strategy for the Bay-Delta Ecosystem: A Unifying Framework for Science, Adaptive Management, and Ecological Restoration” (Mercury Strategy).
- Released a request for grant proposals to provide funding to continue monitoring and evaluating previously funded restoration projects. Funding decisions are expected in late 2005.

In 2004, the Ecosystem Restoration Program implementing agencies completed a comprehensive assessment of the overall status of the Ecosystem Restoration Program aimed at achieving the implementation milestones identified in the Multi-Species Conservation Strategy for the CALFED Bay-Delta Program. This assessment found that progress on nearly 80 percent of the milestones was on or ahead of schedule. This progress was sufficient to allow the state and federal regulatory agencies to continue coverage under the state and federal Endangered Species Act for the entire CALFED Program and contributed to their continuing the program-level commitments.

## **Water Supply Reliability**

Work has progressed on surface storage investigations for all five projects under investigation, and additional work needs to be completed before decisions can be made on which projects should be constructed. In March 2004, the voters in Contra Costa County made a key decision by approving a ballot measure to move forward on Los Vaqueros reservoir expansion.

Through Propositions 13 and 50, the Department of Water Resources has funded more than 100 groundwater investigations and conjunctive use feasibility and pilot studies to be undertaken. More than \$200 million in Proposition 13 funding was awarded between 2001 and 2004 for the construction of 35 groundwater storage and recharge projects that are expected to yield approximately 300,000 acre-feet per year. Coupled with local cost shares for projects, total investment in the groundwater storage program amounts to nearly \$1 billion to date.

The Delta Improvements Package was adopted by the Authority in August 2004. This package includes commitments for several important conveyance projects, including increased State Water Project permitted pumping capacity from the Delta to 8,500 cfs, construction of permanent operable barriers in the south Delta, and construction of an intertie between the State Water Project and the Central Valley Project.

In the first four years, the CALFED agencies provided more than \$160 million in grants, loans and technical support for local water conservation and recycling projects that contribute to the goals of the Program. To date, projects funded through the Water Use Efficiency Program are projected to result in an annual water savings of nearly 50,000 acre-feet of conserved water, and recycle more than 400,000 acre-feet.

CALFED agencies assisted in the transfer of more than 700,000 acre-feet of water in 2004, which includes the Environmental Water Account. In the first four years of the CALFED program, over 3.5 million acre-feet of water was transferred for the Environmental Water Account, DWR Dry Year Program, CVPIA Transfers, Refuge Water Supply and Instream programs, CVP Forbearance, and the Colorado River Contingency Plan.

## **Water Quality**

In 2004, stakeholders and CALFED agencies worked closely to secure adequate funding from Proposition 50 for projects that contribute to CALFED water quality objectives. Lack of consistent funding in previous years prevented the program from making significant headway on water quality goals described in the CALFED ROD.

During the first four years of CALFED ROD implementation, the CALFED agencies:

- Invested in projects to improve water quality for drinking water and ecosystems and promote watershed management, including:
  - More than \$80 million in 63 drinking water quality projects to improve drinking water quality, ranging from source improvement, regional water investigations and exchanges, conveyance improvements, treatment demonstrations and research across the state.

- More than \$70 million in 58 ecosystem restoration projects to identify and reduce contaminants like mercury that can bioaccumulate and affect aquatic life, wildlife and humans who consume fish.
- More than \$40 million in more than 100 watershed projects to provide overall improvement of water quality through watershed stewardship throughout the Bay-Delta and its tributaries.
- Approved a comprehensive Mercury Strategy that will guide and integrate the management and research of mercury in the Bay-Delta system. The strategy is considered one of the most comprehensive of its kind in the country.
- Initiated development of comprehensive plans that will guide management of salinity that impacts drinking water quality and dissolved oxygen that blocks passage of salmon on the San Joaquin River.

### **Levee Integrity**

This year, the unanticipated flooding of Jones Tract in the Delta brought new focus and urgency to the issue of Delta levee stability. The Department of Water Resources has launched a multi-year study to evaluate the potential risk of Delta levee failure as a result of sea level rise, continued land subsidence and the potential for earthquakes. In addition, in response to this year's events, DWR is developing a proposed plan for a comprehensive reassessment of the Delta Levee Program that may lead to changes in the strategy for managing and improving Delta levees.

Because Proposition 50 funds available to support levee activities will be fully expended next year, the CALFED Finance Plan identified a two-year budget shortfall for the Levee Program. As a result, new federal funding for the program will be critical and state general fund dollars may be needed in the near-term to ensure continued progress. The federal authorization for CALFED signed by President Bush in October 2004 authorized \$90 million in appropriations for the U.S. Army Corps of Engineers for Delta levee improvements.

During the first four years of CALFED ROD implementation, the Delta Levee Program:

- Preserved 700 miles of Delta levees through the Delta Levees Subvention Program and made minor improvements while enhancing the Delta environment.
- Increased levee stability on 43 miles of Delta levees.
- Reused more than 900,000 cubic yards of dredge material for levee stability and habitat enhancement.
- Researched and conducted pilot studies on subsidence and subsidence reversal and improved emergency response.

### **Science**

The Science Program in 2004 continued with its intensive effort to improve the understanding of the Bay-Delta system by organizing workshops and symposia and launching a peer reviewed online journal that highlights relevant local research and monitoring. In addition, the Science Program:

- Conducted the fourth annual EWA technical review that looked at the past four years of EWA operations and provided information that will be used in the development of the long-term EWA.

- Held the third CALFED Science Conference in Sacramento in October 2004. More than 1,300 participants attended to hear the results of CALFED supported research.
- Released a request for grant proposals in October that will provide funding for research on key science questions associated with the CALFED Program. Funding decisions are expected in late 2005.

The Science Program continues to support the Independent Science Board and provides assistance with the development of program and issue specific science advisory groups. A new Water Management Science Board was established in 2004 and will meet for the first time in January 2005.

## **Challenges**

The Record of Decision (ROD) was adopted in the year 2000 set forth an extremely complex series of actions to occur over 30 years to resolve ecosystem, water supply, water quality and levee stability issues in the Delta. These actions were negotiated among state and federal agencies and hundreds of stakeholders over a five-year period, and represented the best estimate at the time of the vast array of projects that needed to be undertaken and their cost. Completed at a time of record surpluses in the state and federal treasuries, the ROD envisioned spending \$8.7 billion in the initial stage of the Program.

Since 2000, state and federal budgets have become much tighter. In the first four years since the ROD, lack of federal authorization hampered efforts to secure federal funding, and budget cuts at the state level hampered the ability of state agencies to implement projects and programs even though bond dollars were available.

In its 2003 annual report, the Authority noted that four program areas – water quality, agricultural water use efficiency, levee system integrity, and science – were behind schedule due to funding shortfalls. In the year since that report was issued, funding from Proposition 50 has been allocated to provide support for all program areas, including those four considered furthest behind schedule. As a result, the Authority is able to report significant progress in 2004, although all Program elements remain behind the implementation schedule envisioned in the ROD.

The uncertainties of future funding and the need to develop a benefits-based cost allocation as called for in the ROD, led to the development of the CALFED Bay-Delta Program Finance Plan, adopted by the California Bay-Delta Authority in December 2004. This plan was developed through numerous public meetings with state and federal agencies and stakeholders throughout the CALFED solution area, and included both a review of the projects and programs in the ROD and their cost estimates, as well as options for financing the projects and programs necessary to accomplish the CALFED goals.

SB 1574

Page 1

Date of Hearing: June 27, 2006

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE  
 Lois Wolk, Chair  
 SB 1574 (Kuehl) - As Amended June 22, 2006

SENATE VOTE : (Vote not relevant)SUBJECT : Sacramento-San Joaquin Delta

SUMMARY : Creates a cabinet-level committee chaired by the Secretary of Resources to develop a "blueprint for a sustainable Sacramento-San Joaquin Delta" (Delta) Specifically, this bill :

- 1) Creates a committee headed by the Secretary of Resources and including the Secretary of Business, Transportation, and Housing Agency, the Secretary of Environmental Protection Agency, the Secretary of Food and Agriculture, the President of the Public Utilities Commission, the Director of Finance, the Director of the Office of Planning and Research to develop a plan for a sustainable delta.
- 2) Requires the Blueprint to address the following:
  - a) Sustainable ecosystem functions, including aquatic and terrestrial flora and fauna.
  - b) Sustainable land use and land use patterns.
  - c) Sustainable transportation uses, including streets, roads and highways, and waterborne transportation.
  - d) Sustainable utility uses, including aqueducts, pipelines, and power transmission corridors.
  - e) Sustainable water supply uses.
  - f) Sustainable recreation uses, including current and future recreational and tourism uses.
  - g) Sustainable flood management strategies.
  - h) Other aspects of sustainability deemed desirable by the committee
- 3) Requires the committee to seek input from elected officials, government agencies, stakeholders, academia, and affected local communities.
- 4) Allows the committee to seek input from other policy and resource leaders.

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SB 1574

Page 2

- 5) Requires all relevant state agencies will make staff and resources available to assist in the preparation of the plan at request of the committee and the committee may also contract consultants to assist in preparing the plan for the Delta.
- 6) Requires the committee to submit to the Legislature and Governor the sustainable Delta plan no later than December 31, 2008

EXISTING LAW requires the California Bay-Delta Authority and the CALFED Bay-Delta Program to address ecosystem restoration, water supply, water quality and levee system integrity in the Delta and its watershed.

FISCAL EFFECT : Uncertain

COMMENTS : The Delta is a complex ecological system that functions as both the literal and figurative heart of the California water system. The history of conflicts as to the Delta's management is long and notorious. At this point, the Delta suffers from substantial and rapid change, suggesting that the State's traditional methods for managing the Delta's resources may require some new assessment and adjustment. A 2004 levee failure, an ecosystem crisis, and record-high water exports all contribute to a broad public perception that the Delta's current uses, resource demands and impacts on the ecosystem are unsustainable.

Over the last six months, there have been many public discussions about developing a new "vision" for the Delta. The Water Education Foundation sponsored a "Developing A Delta

Vision" conference earlier this month. Local government officials from the Delta and the Delta Protection Commission have discussed the possibility of a new Delta vision. Resources Agency officials have convened small private meetings to discuss the possibility of a new Delta vision. After the Governor signed last year's AB 1200 (Laird), some in the Administration interpreted the bill to require a Delta vision.

No Administration Proposal: More recently, Administration officials have discussed in public forums possible plans for developing a new Delta vision, looking out on a longer horizon, 50 or 100 years. Such discussion also included suggestions of a possible "Blue Ribbon Commission" led by the Secretary of

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Resources (Mike Chrisman) and the Secretary of Business, Transportation and Housing (Sunne Wright McPeak). The Administration, however, has not presented any formal proposal to the Legislature, suggesting at one point that they did not need the Legislature because state and federal water exporters were going to pay the costs for the Delta vision process, consistent with a December 2005 agreement. After some negotiation with the Department of Finance, the budget now includes a requirement that the Resources Secretary develop a "Delta Action Plan" for a sustainable Delta, but still no proposal for a vision.

The author recently deleted SB 1574's previous provisions about reducing reliance on water supplies from the Delta and inserted a proposal for the development of a Delta "Blueprint," which may be compared with a Delta vision. As amended, the bill aims to develop a plan for a sustainable Delta by creating a cabinet-level committee (NOT a Blue Ribbon Commission) that would address not only planning a sustainable ecosystem but sustainable land, transportation, utility, and recreational uses, water supply uses and flood management strategies.

Other Questions for a Blueprint: The bill in its current form provides a foundation for a vision process to start, but may not provide sufficient detail as to the issues that this cabinet-level committee should consider, including:

Multiple Vision Processes: How will the many "vision" processes, such as the Delta Risk Management Strategy and the Delta Action Plan, be incorporated into this Blueprint?

Planning Horizon: How long should the Blueprint's planning horizon encompass?

Imminent Changes: What does the recent substantial decline in pelagic organisms (i.e. POD) portend for future changes?

San Joaquin River: How will the Federal Court's decision requiring release of water from Friant dam and the imminent settlement of the San Joaquin River litigation affect the Delta's future, particularly for water quality?

Legislative Role: What will the Legislature do with the Blueprint?

Resource Interactions: How do land-use, ecosystem restoration, water conveyance relate to each other?

Dependence on the Delta: How can Delta water exports and the water project contractors' reliance on Delta water be reduced?

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Emergency Response: What's the State's role in responding to emergencies, like earthquakes and multiple levee failures?

Delta Land Use: How are the current farming/recreational uses and new residential development in the Delta affecting the Delta islands and the water system surrounding them? Is or should Delta land-use change?

Hydrological Change: How is global climate change going to affect the Delta and the California water system?

Growth: How much is the Delta's population and economy expected to grow?

Economic Effects: How will Delta changes affect local, statewide, national and global economies?

Delta Institutions: How will changes in Delta governance affect the local, state and federal agencies that play

critical roles in the Delta?

The Committee may consider whether to propose amendments to require the Blueprint to address one or more of these issues.

REGISTERED SUPPORT / OPPOSITION [for the June 22 version] :

Support : None submitted, for this version.

Opposition : None submitted, for this version.

Analysis Prepared by : Alf W. Brandt / W., P. & W. / (916)  
319-2096

Date of Hearing: August 9, 2006

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
 Judy Chu, Chair

SB 1574 (Kuehl) - As Amended: June 22, 2006

Policy Committee: Water, Parks &  
 Wildlife Vote: 9-3

Urgency: No State Mandated Local Program:  
 No Reimbursable:

SUMMARY

This bill requires the Secretary of the Resources Agency to convene a committee to develop and submit, to the governor and Legislature by December 31, 2008, a "Blueprint for a Sustainable Sacramento-San Joaquin Delta" (Delta Blueprint).

FISCAL EFFECT

Moderate one-time GF costs, in the range of \$500,000 primarily in 2007-08, to the Resources Agency to develop the Delta Blueprint.

COMMENTS

1)Rationale . The author argues that a comprehensive plan for the long-term management of the Sacramento-San Joaquin Delta needs to be developed in order to address current demands on Delta resources that are leading to the Delta's potential degradation as an ecological system and an important component in the delivery of drinking water to millions of Californians.

2)Committee Membership . The Delta Blueprint committee would be comprised of the Secretaries for Resources, Business, Transportation and Housing, Environmental Protection, and Food and Agriculture, the President of the Public Utilities Commission, and the Directors of Finance and the Office of Planning and Research.

3)The Delta Blueprint would address the sustainability of ecosystem functions, land use, transportation uses, utility uses, water supply uses, recreation uses, and flood management

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strategies.

Analysis Prepared by : Steve Archibald / APPR. / (916)  
 319-2081





SENATE THIRD READING  
 SB 1574 (Kuehl)  
 As Amended June 22, 2006  
 Majority vote

SENATE VOTE :23-13

WATER, PARKS & WILDLIFE 9-3  
APPROPRIATIONS 13-5

Ayes: Wolk, Bass, Berg, Bermudez, Daucher, Lieu, Matthews, Pavley, Salda?a	Ayes: Chu, Bass, Berg, Calderon, De La Torre, Karnette, Klehs, Laird, Leno, Nation, Ridley-Thomas, Salda?a, Yee
Nays: Villines, Emmerson, Maze	Nays: Sharon Runner, Emmerson, Haynes, Nakanishi, Walters

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SUMMARY : Creates a cabinet-level committee chaired by the Secretary of Resources to develop a "blueprint for a sustainable Sacramento-San Joaquin Delta" (Delta). Specifically, this bill :

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- 1) Creates a committee headed by the Secretary of Resources and including the Secretary of Business, Transportation, and Housing Agency, the Secretary of Environmental Protection Agency, the Secretary of Food and Agriculture, the President of the Public Utilities Commission, the Director of Finance, the Director of the Office of Planning and Research to develop a plan for a sustainable delta.
- 2) Requires the Blueprint to address the following:
  - a) Sustainable ecosystem functions, including aquatic and terrestrial flora and fauna;
  - b) Sustainable land use and land use patterns;

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- c) Sustainable transportation uses, including streets, roads and highways, and waterborne transportation;
  - d) Sustainable utility uses, including aqueducts, pipelines, and power transmission corridors;
  - e) Sustainable water supply uses;
  - f) Sustainable recreation uses, including current and future recreational and tourism uses;
  - g) Sustainable flood management strategies; and,
  - h) Other aspects of sustainability deemed desirable by the committee.
- 3) Requires the committee to seek input from elected officials, government agencies, stakeholders, academia, and affected local communities.
  - 4) Allows the committee to seek input from other policy and resource leaders.
  - 5) Requires all relevant state agencies will make staff and resources available to assist in the preparation of the plan at request of the committee and the committee may also contract consultants to assist in preparing the plan for the Delta.
  - 6) Requires the committee to submit to the Legislature and Governor the sustainable Delta plan no later than December 31,

2008.

EXISTING LAW requires the California Bay-Delta Authority and the CALFED Bay-Delta Program to address ecosystem restoration, water supply, water quality and levee system integrity in the Delta and its watershed.

FISCAL EFFECT : Assembly Appropriations Committee estimates moderate one-time General Fund costs of \$500,000 in 2007-08.

COMMENTS : The Delta is a complex ecological system that functions as both the literal and figurative heart of the California water system. The history of conflicts as to the

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Delta's management is long and notorious. At this point, the Delta suffers from substantial and rapid change, suggesting that the state's traditional methods for managing the Delta's resources may require some new assessment and adjustment. A 2004 levee failure, an ecosystem crisis, and record-high water exports all contribute to a broad public perception that the Delta's current uses, resource demands and impacts on the ecosystem are unsustainable.

Over the last six months, there have been many public discussions about developing a new "vision" for the Delta. At conferences and public meetings, Administration representatives have advocated development of a vision, possibly through a "Blue Ribbon Commission." The Governor, however, has not proposed developing any such vision. The Legislature added requirements in the 2006-07 budget for the Resources Secretary to develop a "Delta Action Plan" for a sustainable Delta, but still no proposal for a vision.

AB 1574 takes the next step in working toward a Delta vision by requiring a cabinet-level committee to develop a "blueprint" for the Delta. While the Governor could direct his cabinet to develop such a blueprint, he has chosen not to accept and execute the Delta vision proposals from his cabinet members. This bill therefore sets the direction for Delta vision development.

Analysis Prepared by : Alf W. Brandt / W., P. & W. / (916)  
319-2096

FN: 0016406

SENATE THIRD READING  
 SB 1574 (Kuehl)  
 As Amended August 24, 2006  
 Majority vote

SENATE VOTE : 23-13

WATER, PARKS & WILDLIFE 9-3 APPROPRIATIONS 13-5

Ayes:	Wolk, Bass, Berg, Bermudez, Daucher, Lieu, Matthews, Pavley, Salda?a	Ayes:	Chu, Bass, Berg, Calderon, De La Torre, Karnette, Klehs, Laird, Leno, Nation, Ridley-Thomas, Salda?a, Yee
Nays:	Villines, Emmerson, Maze	Nays:	Sharon Runner, Emmerson, Haynes, Nakanishi, Walters

SUMMARY : Creates a cabinet-level committee chaired by the Secretary of Resources to develop a "strategic vision for a sustainable Sacramento-San Joaquin Delta" (Delta). Specifically, this bill :

- 1) Creates a committee headed by the Secretary of Resources and including the Secretary of Business, Transportation, and Housing Agency, the Secretary for Environmental Protection, the Secretary of Food and Agriculture, the President of the Public Utilities Commission, the Director of Finance, the Director of the Office of Planning and Research to develop a plan for a sustainable delta.
- 2) Requires the Strategic Vision to address the following:
  - a) Sustainable ecosystem functions, including aquatic and terrestrial flora and fauna;
  - b) Sustainable land use and land use patterns;
  - c) Sustainable transportation uses, including streets, roads and highways, and waterborne transportation;

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- d) Sustainable utility uses, including aqueducts, pipelines, and power transmission corridors;
  - e) Sustainable water supply uses;
  - f) Sustainable recreation uses, including current and future recreational and tourism uses;
  - g) Sustainable flood management strategies; and,
  - h) Other aspects of sustainability deemed desirable by the committee.
- 3) Requires the committee to seek input from elected officials, government agencies, stakeholders, academia, and affected local communities. Authorizes the Governor or the committee to appoint a "blue ribbon" or citizen commission, advisory committee, task force, or any other group the Governor or committee deems necessary or desirable to assist in carrying out this section.
  - 4) Allows the committee to seek input from other policy and resource leaders.
  - 5) Requires all relevant state agencies will make staff and resources available to assist in the preparation of the plan at request of the committee and the committee may also contract consultants to assist in preparing the plan for the Delta.
  - 6) Requires the committee to submit to the Legislature and Governor the sustainable Delta plan no later than December 31,

2008.

EXISTING LAW requires the California Bay-Delta Authority and the CALFED Bay-Delta Program to address ecosystem restoration, water supply, water quality and levee system integrity in the Delta and its watershed.

FISCAL EFFECT : Assembly Appropriations Committee estimates moderate one-time General Fund costs of \$500,000 in 2007-08.

COMMENTS : The Delta is a complex ecological system that functions as both the literal and figurative heart of the California water system. The history of conflicts as to the

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Page 3

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Over the last six months, there have been many public discussions about developing a new "vision" for the Delta. At conferences and public meetings, Administration representatives have advocated development of a vision, possibly through a "Blue Ribbon Commission." The Governor, however, has not proposed developing any such vision. The Legislature added requirements in the 2006-07 budget for the Resources Secretary to develop a "Delta Action Plan" for a sustainable Delta, but still no proposal for a vision.

AB 1574 takes the next step in working toward a Delta vision by requiring a cabinet-level committee to develop a "strategic vision" for the Delta. While the Governor could direct his cabinet to develop such a vision, he has chosen not to accept and execute the Delta vision proposals from his cabinet members. This bill therefore sets the direction for Delta vision development.

Analysis Prepared by : Alf W. Brandt / W., P. & W. / (916)  
319-2096

FN: 0017072

SENATE RULES COMMITTEE	SB 1574
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520	Fax: (916)
327-4478	Version:

## UNFINISHED BUSINESS

Bill No: SB 1574  
 Author: Kuehl (D)  
 Amended: 8/24/06  
 Vote: 21

SENATE NATURAL RES. & WATER COMMITTEE : 5-1, 4/25/06  
 AYES: Kuehl, Kehoe, Lowenthal, Machado, Migden  
 NOES: Margett  
 NO VOTE RECORDED: Aanestad

SENATE APPROPRIATIONS COMMITTEE : 8-5, 5/8/06  
 AYES: Murray, Alarcon, Alquist, Escutia, Florez, Ortiz,  
 Romero, Torlakson  
 NOES: Aanestad, Ashburn, Battin, Dutton, Poochigian

SENATE FLOOR : 23-13, 5/11/06  
 AYES: Alarcon, Alquist, Bowen, Cedillo, Chesbro, Dunn,  
 Escutia, Figueroa, Florez, Kehoe, Kuehl, Lowenthal,  
 Machado, Migden, Murray, Ortiz, Perata, Romero, Scott,  
 Simitian, Speier, Torlakson, Vincent  
 NOES: Aanestad, Ackerman, Ashburn, Battin, Cox, Denham,  
 Dutton, Hollingsworth, Maldonado, Margett, McClintock,  
 Morrow, Poochigian  
 NO VOTE RECORDED: Ducheny, Runner, Soto, Vacancy

ASSEMBLY FLOOR : Not available

SUBJECT : Sacramento-San Joaquin Delta

SOURCE : Author

CONTINUED

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DIGEST : This bill creates a cabinet-level committee chaired by the Secretary of the Resources Agency to develop a strategic vision for a sustainable Sacramento-San Joaquin Delta.

Assembly Amendments (1) delete the previous language that required the Department of Water Resources (DWR) and the Department of Fish and Game (DFG) to include, in determining the principal options for the Delta, at least one option shall be designed to reduce dependence on the Delta for water supply through greater investments in local water supplies, water use efficiency, water recycling, demand management programs, and other actions outside the Delta, and (2) replace the language that creates a cabinet-level committee chaired by the Secretary of the Resources Agency to develop a "Strategic Vision for a Sustainable Sacramento-San Joaquin Delta." The blueprint addresses (a) sustainable ecosystem functions, (b) sustainable land use and land use patterns, (c) sustainable transportation uses, (d) sustainable utility uses, (e) sustainable water supply uses, (f) sustainable recreation uses, and (g) sustainable flood management strategies.

This bill makes it clear that the Governor or the committee may appoint a blue ribbon commission to aid in developing the strategic vision.

ANALYSIS : Last year, the Legislature passed and the Governor signed AB 1200 (Laird). That bill requires the Department of Water Resources (DWR) to evaluate the potential impacts on water supplies derived from the

Sacramento-San Joaquin Delta based on 50, 100, and 200 year projections for each of the following possible impacts on the Delta: subsidence, earthquake, flood, climate change, and a combination of these impacts.

The Department of Fish and Game (DFG) and DWR are required to determine the principal options for the delta.

DWR is further required to evaluate and comparatively rate the options available to implement each of the following objectives:

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1. Prevent the disruption of water supplies derived from the Delta.
2. Improve the quality of drinking water supplies derived from the Delta.
3. Reduce the amount of salts contained in Delta water that is delivered to agricultural areas.
4. Maintain Delta water quality for Delta users.
5. Assist in preserving Delta lands.
6. Protect water rights of the "area of origin" and protect the environments of the Sacramento-San Joaquin river systems.
7. Protect highways, utility facilities, and other infrastructure located within the Delta.

DFG is similarly required to evaluate and comparatively rate the options available to restore salmon and other fisheries that use the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

DWR and DFG are required to report jointly to the Legislature and Governor the results of the evaluations and the comparative ratings by January 1, 2008.

This bill:

1. Creates a committee headed by the Secretary of the Resources Agency and including the Secretary of the Business, Transportation, and Housing Agency, the Secretary for Environmental Protection, the Secretary of Food and Agriculture, the President of the Public Utilities Commission, the Director of the Department of Finance, the Director of the Office of Planning and Research to develop a plan for a sustainable delta.
2. Requires the Strategic Vision to address the following:
  - A. Sustainable ecosystem functions, including aquatic and terrestrial flora and fauna.

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- B. Sustainable land use and land use patterns.
- C. Sustainable transportation uses, including streets, roads and highways, and waterborne transportation.
- D. Sustainable utility uses, including aqueducts, pipelines, and power transmission corridors.
- E. Sustainable water supply uses.
- F. Sustainable recreation uses, including current and future recreational and tourism uses.
- G. Sustainable flood management strategies.

- H. Other aspects of sustainability deemed desirable by the committee.
3. Requires the committee to seek input from elected officials, government agencies, stakeholders, academia, and affected local communities. Authorizes the Governor or the committee to appoint a "blue ribbon" or citizen commission, advisory committee, task force, or any other group the Governor or committee deems necessary or desirable to assist in carrying out this section.
4. Allows the committee to seek input from other policy and resource leaders.
5. Requires all relevant state agencies will make staff and resources available to assist in the preparation of the plan at request of the committee and the committee may also contract consultants to assist in preparing the plan for the Delta.
6. Requires the committee to submit to the Legislature and Governor the sustainable Delta plan no later than December 31, 2008.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: No

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The Assembly Appropriations Committee estimates moderate one-time General Fund costs of \$500,000 in 2007-08.

SUPPORT : (Verified 8/28/06)

East Bay Municipal Utility District  
Metropolitan Water District of Southern California  
Southern California Water Committee

OPPOSITION : (Verified 8/28/06)

Association of California Water Agencies

ARGUMENTS IN SUPPORT : According to the author:

"About the time that the Legislature passed AB 1200, the staff of the California Bay-Delta Authority proposed to develop a 'delta visioning' process. The details of the proposed delta visioning process seem to still be changing. However, many believe that one of the purposes of the delta visioning process is to formally recommend the construction of a peripheral canal or some other delta bypass conveyance facility.

"If the delta visioning process is to be the justification for a peripheral canal, it is important to make sure that:

- the analysis is unimpeachable,
- the objectives are unbiased, and
- there is at least one credible alternative designed to reduce dependence on the delta for water supply through greater investments in local water supplies, water use efficiency, water recycling, demand management programs, and other actions outside the delta."

ARGUMENTS IN OPPOSITION : The Valley Ag Water Coalition (VAWC) "objects to the proposed redirection of the AB 1200 study by SB 1574 toward an analysis of reducing reliance on delta water exports. The delta, in its current configuration, and absent an isolated conveyance facility,

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will always be critically important to ensuring the delivery of water to 23 million (and growing)



Californians." VAWC concludes, "The goal of the AB 1200 study should be to produce options for ensuring that the delta remains the vital conduit for water supply deliveries in the future that it is today."

CTW:mel 8/28/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* END \*\*\*\*

SENATE RULES COMMITTEE	SB 1574
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520	Fax: (916)
327-4478	

## UNFINISHED BUSINESS

Bill No: SB 1574  
 Author: Kuehl (D)  
 Amended: 8/24/06  
 Vote: 21

SENATE NATURAL RES. & WATER COMMITTEE : 5-1, 4/25/06  
 AYES: Kuehl, Kehoe, Lowenthal, Machado, Migden  
 NOES: Margett  
 NO VOTE RECORDED: Aanestad

SENATE APPROPRIATIONS COMMITTEE : 8-5, 5/8/06  
 AYES: Murray, Alarcon, Alquist, Escutia, Florez, Ortiz,  
 Romero, Torlakson  
 NOES: Aanestad, Ashburn, Battin, Dutton, Poochigian

SENATE FLOOR : 23-13, 5/11/06  
 AYES: Alarcon, Alquist, Bowen, Cedillo, Chesbro, Dunn,  
 Escutia, Figueroa, Florez, Kehoe, Kuehl, Lowenthal,  
 Machado, Migden, Murray, Ortiz, Perata, Romero, Scott,  
 Simitian, Speier, Torlakson, Vincent  
 NOES: Aanestad, Ackerman, Ashburn, Battin, Cox, Denham,  
 Dutton, Hollingsworth, Maldonado, Margett, McClintock,  
 Morrow, Poochigian  
 NO VOTE RECORDED: Ducheny, Runner, Soto, Vacancy

ASSEMBLY FLOOR : 47-31, 8/28/06 - See last page for vote

SUBJECT : Sacramento-San Joaquin Delta

SOURCE : Author

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DIGEST : This bill creates a cabinet-level committee chaired by the Secretary of the Resources Agency to develop a strategic vision for a sustainable Sacramento-San Joaquin Delta.

Assembly Amendments (1) delete the previous language that required the Department of Water Resources (DWR) and the Department of Fish and Game (DFG) to include, in determining the principal options for the Delta, at least one option shall be designed to reduce dependence on the Delta for water supply through greater investments in local water supplies, water use efficiency, water recycling, demand management programs, and other actions outside the Delta, and (2) replace the language that creates a cabinet-level committee chaired by the Secretary of the Resources Agency to develop a "Strategic Vision for a Sustainable Sacramento-San Joaquin Delta." The blueprint addresses (a) sustainable ecosystem functions, (b) sustainable land use and land use patterns, (c) sustainable transportation uses, (d) sustainable utility uses, (e) sustainable water supply uses, (f) sustainable recreation uses, and (g) sustainable flood management strategies.

This bill makes it clear that the Governor or the committee may appoint a blue ribbon commission to aid in developing the strategic vision.

ANALYSIS : Last year, the Legislature passed and the Governor signed AB 1200 (Laird). That bill requires the Department of Water Resources (DWR) to evaluate the potential impacts on water supplies derived from the

Sacramento-San Joaquin Delta based on 50, 100, and 200 year projections for each of the following possible impacts on the Delta: subsidence, earthquake, flood, climate change, and a combination of these impacts.

The Department of Fish and Game (DFG) and DWR are required to determine the principal options for the delta.

DWR is further required to evaluate and comparatively rate the options available to implement each of the following objectives:

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1. Prevent the disruption of water supplies derived from the Delta.
2. Improve the quality of drinking water supplies derived from the Delta.
3. Reduce the amount of salts contained in Delta water that is delivered to agricultural areas.
4. Maintain Delta water quality for Delta users.
5. Assist in preserving Delta lands.
6. Protect water rights of the "area of origin" and protect the environments of the Sacramento-San Joaquin river systems.
7. Protect highways, utility facilities, and other infrastructure located within the Delta.

DFG is similarly required to evaluate and comparatively rate the options available to restore salmon and other fisheries that use the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

DWR and DFG are required to report jointly to the Legislature and Governor the results of the evaluations and the comparative ratings by January 1, 2008.

This bill:

1. Creates a committee headed by the Secretary of the Resources Agency and including the Secretary of the Business, Transportation, and Housing Agency, the Secretary for Environmental Protection, the Secretary of Food and Agriculture, the President of the Public Utilities Commission, the Director of the Department of Finance, the Director of the Office of Planning and Research to develop a plan for a sustainable delta.
2. Requires the Strategic Vision to address the following:
  - A. Sustainable ecosystem functions, including aquatic and terrestrial flora and fauna.

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- B. Sustainable land use and land use patterns.
- C. Sustainable transportation uses, including streets, roads and highways, and waterborne transportation.
- D. Sustainable utility uses, including aqueducts, pipelines, and power transmission corridors.
- E. Sustainable water supply uses.
- F. Sustainable recreation uses, including current and future recreational and tourism uses.
- G. Sustainable flood management strategies.

- H. Other aspects of sustainability deemed desirable by the committee.
3. Requires the committee to seek input from elected officials, government agencies, stakeholders, academia, and affected local communities. Authorizes the Governor or the committee to appoint a "blue ribbon" or citizen commission, advisory committee, task force, or any other group the Governor or committee deems necessary or desirable to assist in carrying out this section.
4. Allows the committee to seek input from other policy and resource leaders.
5. Requires all relevant state agencies will make staff and resources available to assist in the preparation of the plan at request of the committee and the committee may also contract consultants to assist in preparing the plan for the Delta.
6. Requires the committee to submit to the Legislature and Governor the sustainable Delta plan no later than December 31, 2008.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: No

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The Assembly Appropriations Committee estimates moderate one-time General Fund costs of \$500,000 in 2007-08.

SUPPORT : (Verified 8/28/06)

East Bay Municipal Utility District  
Metropolitan Water District of Southern California  
Southern California Water Committee

OPPOSITION : (Verified 8/28/06)

Association of California Water Agencies

ARGUMENTS IN SUPPORT : According to the author:

"About the time that the Legislature passed AB 1200, the staff of the California Bay-Delta Authority proposed to develop a 'delta visioning' process. The details of the proposed delta visioning process seem to still be changing. However, many believe that one of the purposes of the delta visioning process is to formally recommend the construction of a peripheral canal or some other delta bypass conveyance facility.

"If the delta visioning process is to be the justification for a peripheral canal, it is important to make sure that:

- the analysis is unimpeachable,
- the objectives are unbiased, and
- there is at least one credible alternative designed to reduce dependence on the delta for water supply through greater investments in local water supplies, water use efficiency, water recycling, demand management programs, and other actions outside the delta."

ARGUMENTS IN OPPOSITION : The Valley Ag Water Coalition (VAWC) "objects to the proposed redirection of the AB 1200 study by SB 1574 toward an analysis of reducing reliance on delta water exports. The delta, in its current configuration, and absent an isolated conveyance facility,

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will always be critically important to ensuring the delivery of water to 23 million (and growing)

Californians." VAWC concludes, "The goal of the AB 1200 study should be to produce options for ensuring that the delta remains the vital conduit for water supply deliveries in the future that it is today."

ASSEMBLY FLOOR :

AYES: Arambula, Baca, Bass, Berg, Bermudez, Calderon, Canciamilla, Chan, Chavez, Chu, Cohn, Coto, Daucher, De La Torre, Dymally, Evans, Frommer, Goldberg, Hancock, Jerome Horton, Jones, Karnette, Klehs, Koretz, Laird, Leno, Levine, Lieber, Lieu, Liu, Matthews, Montanez, Mullin, Nation, Nava, Oropeza, Pavley, Ridley-Thomas, Ruskin, Saldana, Salinas, Torrico, Umberg, Vargas, Wolk, Yee, Nunez

NOES: Aghazarian, Benoit, Blakeslee, Bogh, Cogdill, DeVore, Emmerson, Garcia, Haynes, Shirley Horton, Houston, Huff, Keene, La Malfa, La Suer, Leslie, Maze, McCarthy, Mountjoy, Nakanishi, Niello, Parra, Plescia, Richman, Sharon Runner, Spitzer, Strickland, Tran, Villines, Walters, Wyland

NO VOTE RECORDED: Negrete McLeod, Vacancy

CTW:mel 8/29/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

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SENATE RULES COMMITTEE	SB 1574
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520	Fax: (916)
327-4478	

## UNFINISHED BUSINESS

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 Author: Kuehl (D)  
 Amended: 8/24/06  
 Vote: 21

SENATE NATURAL RES. & WATER COMMITTEE : 5-1, 4/25/06  
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 NO VOTE RECORDED: Aanestad

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 Romero, Torlakson  
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 Escutia, Figueroa, Florez, Kehoe, Kuehl, Lowenthal,  
 Machado, Migden, Murray, Ortiz, Perata, Romero, Scott,  
 Simitian, Speier, Torlakson, Vincent  
 NOES: Aanestad, Ackerman, Ashburn, Battin, Cox, Denham,  
 Dutton, Hollingsworth, Maldonado, Margett, McClintock,  
 Morrow, Poochigian  
 NO VOTE RECORDED: Ducheny, Runner, Soto, Vacancy

ASSEMBLY FLOOR : 47-31, 8/28/06 - See last page for vote

SUBJECT : Sacramento-San Joaquin Delta

SOURCE : Author

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1. Creates a committee headed by the Secretary of the Resources Agency and including the Secretary of the Business, Transportation, and Housing Agency, the Secretary for Environmental Protection, the Secretary of Food and Agriculture, the President of the Public Utilities Commission, the Director of the Department of Finance, the Director of the Office of Planning and Research to develop a plan for a sustainable delta.
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- B. Sustainable land use and land use patterns.
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- D. Sustainable utility uses, including aqueducts, pipelines, and power transmission corridors.
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- F. Sustainable recreation uses, including current and future recreational and tourism uses.
- G. Sustainable flood management strategies.

- H. Other aspects of sustainability deemed desirable by the committee.
3. Requires the committee to seek input from elected officials, government agencies, stakeholders, academia, and affected local communities. Authorizes the Governor or the committee to appoint a "blue ribbon" or citizen commission, advisory committee, task force, or any other group the Governor or committee deems necessary or desirable to assist in carrying out this section.
4. Allows the committee to seek input from other policy and resource leaders.
5. Requires all relevant state agencies will make staff and resources available to assist in the preparation of the plan at request of the committee and the committee may also contract consultants to assist in preparing the plan for the Delta.
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FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: No

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Page

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The Assembly Appropriations Committee estimates moderate one-time General Fund costs of \$500,000 in 2007-08.

SUPPORT : (Verified 8/30/06)

Association of California Water Agencies  
East Bay Municipal Utility District  
Metropolitan Water District of Southern California  
Southern California Water Committee

ARGUMENTS IN SUPPORT : According to the author:

"About the time that the Legislature passed AB 1200, the staff of the California Bay-Delta Authority proposed to develop a 'delta visioning' process. The details of the proposed delta visioning process seem to still be changing. However, many believe that one of the purposes of the delta visioning process is to formally recommend the construction of a peripheral canal or some other delta bypass conveyance facility.

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ASSEMBLY FLOOR :  
AYES: Arambula, Baca, Bass, Berg, Bermudez, Calderon, Canciamilla, Chan, Chavez, Chu, Cohn, Coto, Daucher, De La Torre, Dymally, Evans, Frommer, Goldberg, Hancock, Jerome Horton, Jones, Karnette, Klehs, Koretz, Laird, Leno, Levine, Lieber, Lieu, Liu, Matthews, Montanez, Mullin, Nation, Nava, Oropeza, Pavley, Ridley-Thomas,

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Ruskin, Saldana, Salinas, Torrico, Umberg, Vargas, Wolk, Yee, Nunez



NOES: Aghazarian, Benoit, Blakeslee, Bogh, Cogdill,  
DeVore, Emmerson, Garcia, Haynes, Shirley Horton,  
Houston, Huff, Keene, La Malfa, La Suer, Leslie, Maze,  
McCarthy, Mountjoy, Nakanishi, Niello, Parra, Plescia,  
Richman, Sharon Runner, Spitzer, Strickland, Tran,  
Villines, Walters, Wyland  
NO VOTE RECORDED: Negrete McLeod, Vacancy

CTW:mel 8/30/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*



## California State Legislature

# THE 2009 DELTA & WATER LEGISLATION

## Legislative History

Delta Vision Documents can be found on the Delta Vision website:

<http://deltavision.ca.gov/>

The two documents that would have been included in this Legislative History (but were omitted as the file sizes are large) are

### I. Delta Vision Strategic Plan Document

[http://deltavision.ca.gov/StrategicPlanningProcess/StaffDraft/Delta\\_Vision\\_Strategic\\_Plan\\_standard\\_resolution.pdf](http://deltavision.ca.gov/StrategicPlanningProcess/StaffDraft/Delta_Vision_Strategic_Plan_standard_resolution.pdf)

and

### II. Delta Vision Final Report

[http://deltavision.ca.gov/BlueRibbonTaskForce/FinalVision/Delta\\_Vision\\_Final.pdf](http://deltavision.ca.gov/BlueRibbonTaskForce/FinalVision/Delta_Vision_Final.pdf)

## **SENATE COMMITTEE ON NATURAL RESOURCES AND WATER**

**Senator Fran Pavley, Chair  
2009-2010 Regular Session**

**BILL NO:** SB 229

**AUTHOR:** Pavley

**VERSION:** April 13, 2009

**DUAL REFERRAL:** No

**SUBJECT:** California Water Commission: Bay-Delta.

**HEARING DATE:** April 14, 2009

**URGENCY:** No

**CONSULTANT:** Dennis O'Connor

**FISCAL:** Yes

### **BACKGROUND AND EXISTING LAW**

In 1957, the Legislature created the Department of Water Resources (DWR) and the California Water Commission. The principle purpose of the department was to design, construct, and operate what was to become known as the State Water Project (SWP).

The commission is composed of nine members, appointed by the Governor, and subject to Senate confirmation. The original purpose of the commission was to conduct an annual review of the progress of construction of the SWP and report its findings to the legislature. The commission was also the reviewing agency for any regulations proposed by the Department, and was later granted the authority to name facilities of the SWP.

The original statutes also included a provision that while it was the intent of the Legislature that the commission and director of DWR be in agreement whenever possible, if there was a disagreement the opinion of the director of DWR would prevail.

While the commission still exists in statute, there currently are no appointed members to the commission, nor have there been any for quite some time.

In December 1994, state and federal agencies, urban and agricultural water users, and environmental advocates signed the Bay Delta Accord. Its three main goals were: develop water quality standards to protect the estuary, coordinate operations of the state and federal water projects, and develop a long-term solution for the Delta. The signing of the Accord marked the birth of the CalFed Bay-Delta Program.

To implement the CalFed program, in 2002 the Legislature passed and the Governor signed SB 1653 (Costa). This bill enacted the California Bay-Delta Authority Act, which, among other things, created the California Bay Delta Authority (CBDA). The CBDA is composed of representatives from six state agencies, six federal agencies, seven public members, and one member of the Bay-Delta Public Advisory Committee.

As documented in a 2005 Little Hoover Commission report, the CBDA and CalFed program has not been as successful as originally anticipated. The Commission noted, "Frustration with CalFed is warranted. Because of a faulty design, the CBDA cannot effectively coordinate activities, push agencies to perform, or provide rigorous oversight."

During its 2005-2006 Regular Session, the Legislature passed and the Governor signed AB1200 (Laird), SB1574 (Kuehl), and AB1803(Committee on Budget). Together, these bills required an assessment of the potential impacts on water supplies of catastrophic failures in the Delta, identification and evaluation of options to protect water supplies and the ecosystem of the Delta, the development of a vision for a sustainable Delta, and a strategic plan to achieve a sustainable Sacramento-San Joaquin Delta. Additionally, SB 1574 created a Delta Vision Committee to develop the vision and strategic plan. The Committee is composed of the Secretary of the Resources Agency as chair, and the Secretaries of the Business, Transportation and Housing Agency, Department of Food and Agriculture, and the California Environmental Protection Agency, and the President of the Public Utilities Commission.

On September 28, 2006, the Governor issued an Executive Order that, among other things, established a Blue Ribbon Task Force and directed the Task Force to:

- Develop a vision for the sustainable management of the Delta,
- Report to the to the Delta Vision Committee and Governor its findings and recommendations on its vision for the Delta by January 1, 2008, and
- Develop a strategic plan to implement the Delta vision by October 31, 2008.

The Executive Order further directed the Delta Vision Committee to report to the Governor and the Legislature by December 31, 2008 with recommendations for implementing the Delta Vision and Strategic Plan.

October 2008, the Blue Ribbon Task Force published its *Delta Vision Strategic Plan*. According to the plan, in order to achieve a healthy Delta and a more reliable water system for Californians, policy makers must:

- Legally acknowledge the co-equal goals of restoring the Delta ecosystem and creating a more reliable water supply for California.
- 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.
- Restore the Delta ecosystem as the heart of a healthy estuary.
- Promote statewide water conservation, efficiency, and sustainable use.
- Build facilities to improve the existing water conveyance system and expand statewide storage, and operate both to achieve the co-equal goals.
- Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and strategic levee investments.
- Establish a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve these goals.

## **PROPOSED LAW**

This bill would enact the Bay-Delta Interim Governance Act of 2009. Specifically, this bill would:

1. State the intent of the Legislature to provide for interim management and governance measures that will contribute to the health of the Bay-Delta and to enhance water supply reliability to those who depend on adequate water supplies that originate in the Bay-Delta. Furthermore, it is the intent of the Legislature:
  - To accomplish the identified tasks through the use of existing government agencies and not to create additional entities.

- That federal, state, and local governments should cooperate in devising the necessary projects, programs, water supply reliability improvements, and ecosystem recovery strategies in the Bay-Delta.
2. Establish as state policy that, to the maximum extent practicable, projects and programs of state agencies that affect the Bay-Delta shall achieve the two coequal goals of ecosystem recovery and improvements to the reliability of public water supplies.
  3. Require the Natural Resources Agency (NRA) to take all necessary actions to ensure that all funds and programs of the State of California and its cooperating partners in the federal government and local governments in the Bay-Delta are consistent with the two coequal goals.
  4. Require the NRA to adopt a Bay-Delta Conservation Plan for the Bay-Delta. The plan would be required to do the following:
    - Incorporate adaptive management techniques to the maximum extent practicable in order to focus the best available scientific information on the two coequal goals
    - Be consistent with the Natural Community Conservation Planning Act (NCCP Act). The secretary would be required to extend an invitation to appropriate federal agencies and local governments inviting their participation and entering into agreements consistent with this section at the earliest possible time.
    - Comply with the California Environmental Quality Act (CEQA). To the extent feasible, the NRA would be required to coordinate with local governments that are developing NCCPs adjacent to the Bay-Delta.
  5. Require development and implementation of the plan to be funded through a fee paid by all entities that are beneficiaries of the plan and those entities that divert water from a Bay-Delta water body. “Beneficiaries” would be defined as those entities that obtain or are delegated authority, pursuant to the plan or its implementing agreements, to take endangered, threatened, or candidate species protected under state or federal law.
  6. Require the Delta Vision Committee to develop an interim plan that includes recommendations for projects and programs to address other interim measures not included in the plan, including issues pertaining to transportation, utilities, recreation, water supply, and flood control.

In addition, this bill would:

7. Reform the California Water Commission as follows:
  - Move the commission from being within DWR and instead make it an independent commission within the NRA.
  - Change the membership from 9 members with specific backgrounds and experiences to 5 members from all parts of the state.
  - Eliminate the ability of the Director of DWR to override decisions of the commission.
  - Make other technical changes.
8. Charge the commission with primary authority to implement, approve, and oversee implantation of the Bay-Delta Governance Act of 2009, including:
  - Ensuring that the coequal goals for the governance of the Delta are successfully coordinated and implemented.

- The implementation of the Bay-Delta Conservation Plan.
  - The interim plan described in Section 80534, adopted pursuant to that act.
  - The responsibility to recommend priority activities and projects to the Natural Resources Agency, the state board, and other entities for environmental review and implementation that are included within the Bay-Delta Conservation Plan or the interim plan required by Sec. 80534.
9. Provide the commission with the following additional authorities and duties:
- Authority to enter into agreements with appropriate state agencies to provide technical assistance that may be necessary to implement specific projects.
  - Authority to delegate lead agency status for projects in the Bay-Delta Conservation Plan or the interim plan to other appropriate state or local entities.
  - Duty to serve as lead agency to implement projects recommended by the final environmental impact report of the Bay-Delta Conservation Plan or the interim plan.
  - Duty to establish a Delta fee in accordance with the Bay-Delta Governance Act of 2009.
10. Establish a watermaster for the Delta who would be charged with the responsibility of enforcing all statutory provisions that are relevant to the successful implementation of the Bay-Delta Conservation Plan or the interim plan:
- The commission would be required to recommend at least one individual to serve as a watermaster.
  - The costs of the watermaster would be paid from the Delta Governance Account established pursuant to Bay-Delta Governance Act of 2009.
  - The watermaster would notify the commission of any action of the Natural Resources Agency or the state board or any other governmental entity that is inconsistent with this article.
  - Watermaster decisions could be appealed by an affected party to the chair of the state board. The chair may stay decisions if he or she determines that the decision of the watermaster was not supported by substantial evidence in the record. An order of the chair of the state board pursuant to this subdivision that stays an order of the watermaster would be set for hearing before the full state board at the earliest possible meeting.

## **ARGUMENTS IN SUPPORT**

According to the Author, “The ongoing environmental collapse of the California Bay-Delta, if not reversed, will result in ecosystem losses that threaten the water supplies of millions of Californians, agriculture, and protected species such as salmon and other species. The Legislature is considering many bills on the Bay-Delta in this term, but SB 229 is unique in that it focuses on only short-term, positive steps that can be achieved promptly. This bill adopts the recommendation of the Delta Vision Task Force that two co-equal goals should be adopted: ecosystem restoration and improvements to water supply reliability. It does not address long-term governance, a peripheral canal, possible bond financing, or land use reforms. Instead, it focuses only on ecosystem planning, short-term funding, and enforcement of existing laws.”

## **ARGUMENTS IN OPPOSITION**

According to the Association of California Water Agencies (ACWA), “While it is possible that a permanent Delta Governance structure may not be negotiated in the 2009 legislative session and an interim approach as contemplated by SB 299 may be required, ACWA respectfully submits that the approach in SB 229 is overbroad and over reaching.” ACWA raises particular concerns

with (1) Not being clear whether the Bay Delta Conservation Plan discussed in this bill is the same as the Bay Delta Conservation Plan being developed by the NRA, delta water exporters, and others, (2) the appointment of a watermaster; and (3) fees.

## COMMENTS

Work In Progress. This bill, like most of the other bills addressing the Delta, is still evolving. Consequently, there are some inconsistencies and technical issues within the bill. Should this bill move forward, the Committee may wish to ask the author to commit to working with committee staff to resolve those technical issues as the bill progresses.

The Plan is the Key. Everything in this bill tees off from the Bay-Delta Conservation Plan for the Bay-Delta – to the extent the plan fails to adequately address one or more critical issue affecting the Delta, the likelihood of successfully achieving the coequal goals of restoring the Delta ecosystem and creating a more reliable water supply is diminished.

Elephants in the Room. The Delta Vision efforts have provided needed clarity to many of the critical problems facing the Delta. This bill, like a number of other bills, builds upon the efforts and recommendations of the Blue Ribbon Task Force. However, like the Task Force, it does not directly confront many of the crucial questions regarding the Delta. These include:

1. *To PC, or not to PC: That is the question.* Most, if not all, Delta water exporters believe that a peripheral canal or some other sort of isolated conveyance is essential to provide an adequate and reliable supply of water from the Delta. Most, if not all, in-Delta water users believe a peripheral canal would be the demise of the Delta. The environmental community is of mixed minds on the topic. And, the Blue Ribbon Task Force largely punted, calling for a dual conveyance strategy incorporating both a through-Delta and an isolated conveyance strategy.

Disputes about whether DWR has existing authority to build a PC aside, Delta water policy is not well served by being vague. The author of this bill, as well as the authors of the other Delta bills, should consider either explicitly prohibiting a PC, explicitly authorizing a PC, or explicitly delineating the conditions under which such a decision would be made, by whom, and using what criteria.

2. *Surface Storage.* Like the conveyance debate, many believe that additional surface storage is essential to provide an adequate and reliable supply of water. Others argue that while additional storage might be helpful, the data supporting additional surface storage is not persuasive, especially if public funds are involved. For a variety of reasons, (some good, some not so good), the CalFed program has yet to complete engineering and financial feasibility studies for any of the five surface storage projects identified in the CalFed ROD.

This is another area calling for plain talk. The author of this bill, as well as the authors of the other Delta bills, should consider either explicitly prohibiting new surface storage as a part of this effort, explicitly authorizing new surface storage, or explicitly delineating the conditions under which such a decision would be made, by whom, and using what criteria.

3. *The Big One.* Scientific evidence continues to mount that the Delta, in its current form, is not sustainable. According to DWR's February 2009 Delta Risk Management Study, under current conditions, there is a greater than 50% chance that within the next 25 years, 30 or more islands will fail because of an earthquake or flood. The study further estimates that



repairing those islands would cost \$3.0 – \$4.2 billion, taking 1120 – 1520 days to close all the breaches, and 1,240 – 1,660 days to drain all the islands.

Any plan for the Delta that does not take this potential under explicit consideration is fatally flawed. The author of this bill, as well as the authors of the other Delta bills, should consider, at a minimum, requiring the Delta Plan to explicitly consider the potential for catastrophic levee failure in the Delta and further to develop appropriate response plans.

4. *CalFed*. This bill would leave intact the California Bay Delta Authority Act. That act was enacted to oversee the implementation of the CalFed Bay Delta Program. Among other things, that Act created the California Bay Delta Authority (CBDA). The CBDA has not met in nearly two years because of inability to get a quorum.

It is not at all clear whether this bill is intended to completely replace CalFed, supplement CalFed, or operate independently from CalFed. Clarity would be helpful. Moreover, the author of this bill, as well as the authors of the other Delta bills, should be encouraged to consider eliminating the CBDA.

5. *Fish & Game*. Restoring the ecosystem functions of the Delta will require a well functioning, scientifically directed, independent Department of Fish and Game. There is widespread concern that, for a variety of reasons, the Department does not now meet that description, and may not for the foreseeable future.

Reform of DFG is probably beyond the scope of this bill. That said, to not take steps to restore confidence in DFG is probably a recipe for failure.

Related Bills: Each of the following bills address one or more aspect of problems the Delta.

*Senate:*

- |                  |  |
|------------------|--|
| SB 12 (Simitian) | A compressive bill that largely mirrors the recommendations of the Blue Ribbon Task Force.                 |
| SB 457 (Wolk)    | A compressive bill that builds on many, but not all, of the recommendations of the Blue Ribbon Task Force. |
| SB 458 (Wolk)    | Establishes a Sacramento- San Joaquin Delta Conservancy.   |

*Assembly:*

- |                 |   |
|-----------------|---|
| AB 13 (Salas)   | Establishes a Sacramento-San Joaquin Delta Conservancy. |
| AB 39 (Huffman) | Intended to become a comprehensive bill on the Delta.   |

**SUGGESTED AMENDMENTS:** None

**SUPPORT**

Natural Resources Defense Council (In Concept)

**OPPOSITION**

Association of California Water Agencies (Unless Amended)



**Senate Appropriations Committee Fiscal Summary**  
**Senator Christine Kehoe, Chair**

**SB 229 (Pavley)**

**Hearing Date:** 05/28/2009

**Amended:** 04/13/2009

**Consultant:** Brendan McCarthy

**Policy Vote:** NR&W 7-3

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**BILL SUMMARY:** SB 229 would revive the California Water Commission, move it out of the Department of Water Resources, and give it substantial new authority relating to the management of the Delta. The bill would require the implementation of a conservation plan for the Delta, to be funded with fee revenues.

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**Fiscal Impact (in thousands)**

<b><u>Major Provisions</u></b>	<b><u>2009-10</u></b>	<b><u>2010-11</u></b>	<b><u>2011-12</u></b>	<b><u>Fund</u></b>
Water Commission staff costs	Unknown, potentially in the millions			General / Special *
Implementation of Bay Delta Conservation Plan	Unknown, potentially in the billions			Special **
Implementation of interim measures	Unknown			Special **

\* New special fund. Partially offset by fee revenues.

\*\* New special fund. Fully offset by fee revenues.

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**STAFF COMMENTS: Suspense file.**

During its 2005-2006 Regular Session, the Legislature passed and the Governor signed AB1200 (Laird), SB1574 (Kuehl), and AB1803 (Committee on Budget). Together, these bills required an assessment of the potential impacts on water supplies of catastrophic failures in the Delta, identification and evaluation of options to protect water supplies and the ecosystem of the Delta, the development of a vision for a sustainable Delta, and a strategic plan to achieve a sustainable Sacramento-San Joaquin Delta. Additionally, SB 1574 created a Delta Vision Committee to develop the vision and strategic plan.

On September 28, 2006, the Governor issued an Executive Order that, among other things, established a Blue Ribbon Task Force and directed it to develop a vision for the sustainable management of the Delta.

In October 2008, the Blue Ribbon Task Force published its *Delta Vision Strategic Plan*. According to the plan, in order to achieve a healthy Delta and a more reliable water system for Californians, policy makers must:

- Legally acknowledge the co-equal goals of restoring the Delta ecosystem and creating a more reliable water supply for California.

- 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.
- Restore the Delta ecosystem as the heart of a healthy estuary.
- Promote statewide water conservation, efficiency, and sustainable use.
- Build facilities to improve the existing water conveyance system and expand statewide storage, and operate both to achieve the co-equal goals.
- Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and strategic levee investments.
- Establish a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve these goals.

The report of the Blue Ribbon Task force can be considered a starting point for several bills under consideration by this committee relating to the Delta.

SB 229 revives the California Water Commission (currently inactive) and moves it out of the Department of Water Resources. Under the bill, the Water Commission would continue to approve Department of Water Resources regulations. The Water Commission would also recommend an individual to serve as a watermaster for the Delta.

In addition, the bill would grant the Water Commission substantial new authority relating to the management of the Delta. Specifically, the bill would grant authority to implement a Bay-Delta Conservation Plan and interim measures to protect the Delta. Currently, a conservation plan is being developed by the Department of Water Resources, the Department of Fish and Game, federal agencies, water exporters, and other interested parties. It is not clear from the bill whether the plan currently under development will be adopted and implemented by the Water Commission or whether the Water Commission would be free to develop and adopt its own version of a conservation plan. The full cost to implement a Bay-Delta Conservation Plan is unknown. However, in the planning process currently underway, estimates of the construction and operation costs for the alternatives under consideration range from \$500 million to almost \$9 billion. Under the bill, costs to implement the conservation plan would be born by those who divert water from the Delta and others who would be granted regulatory protection under the conservation plan, pursuant to the Natural Communities Conservation Planning Act.

In addition to the implementation of the long-term Bay-Delta Conservation Plan, the bill requires the Water Commission to implement interim measures. The scope of the interim measures is unknown, but the bill directs that they address issues relating to transportation, utilities, recreation, water supply, and flood control. Interim measures would also be paid for with user fees.

Staff notes that this bill is one of several bills relating to the Delta that will be before this committee, including SB 12 (Simitian), SB 229 (Pavley), SB 457 (Wolk), and SB 458 (Wolk).

**SENATE RULES COMMITTEE**

SB 229

Office of Senate Floor Analyses

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**THIRD READING**

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Bill No: SB 229

Author: Pavley (D)

Amended: 6/1/09

Vote: 21

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SENATE NATURAL RES. & WATER COMMITTEE: 7-3, 4/14/09

AYES: Pavley, Kehoe, Leno, Padilla, Simitian, Wiggins, Wolk

NOES: Cogdill, Hollingsworth, Huff

NO VOTE RECORDED: Benoit

SENATE APPROPRIATIONS COMMITTEE: 7-5, 5/28/09

AYES: Kehoe, Corbett, DeSaulnier, Hancock, Leno, Oropeza, Yee

NOES: Cox, Denham, Runner, Walters, Wyland

NO VOTE RECORDED: Wolk

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**SUBJECT:** California Water Commission: Bay-Delta

**SOURCE:** Author

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**DIGEST:** This bill revives the California Water Commission, moves it out of the Department of Water Resources, and gives it substantial new authority relating to the management of the Delta.

**ANALYSIS:**

Existing law:

1. Establishes the nine-member California Water Commission in the Department of Water Resources and requires the California Water Commission to conduct an annual review of the progress and operation

CONTINUED

of the State Water Project and to carry out various other related functions.

2. Requires various state agencies to carry out programs, projects, and activities on behalf of the Sacramento-San Joaquin Delta.

The California Bay-Delta Authority Act establishes in the state government the California Bay-Delta Authority. The Act requires the Authority and the implementing agencies to carry out 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 Programmatic Record of Decision, dated August 28, 2000, or as it may be amended.

This bill:

1. Provides that the California Water Commission (Commission) is an independent commission, and decreases the number of Commission members from nine to five.
2. States that the Governor shall appoint the initial five members of the Commission on or before January 15, 2010. The members will serve staggered terms. The terms of the members of the Commission will expire as follows: one member on January 15, 2011, two members on January 15, 2012, and two members on January 15, 2013. The members of the commission will allocate the initial terms among themselves by lot or other random method. The terms of the successors to the initial members will be for four years by current law.
3. Requires the Commission to serve as lead agency to implement projects recommended by the final environmental impact report of the Bay-Delta Conservation Plan. The Commission may enter into agreements with the appropriate state agencies to provide technical assistance that may be necessary to implement specific projects. The Commission may delegate lead agency status for projects in the Bay-Delta Conservation Plan to other appropriate state or local entities.
4. Requires the Commission to identify and prioritize early action projects and programs necessary for achieving the two primary goals for the Sacramento-San Joaquin Delta of restoring the Delta ecosystem and

CONTINUED

creating a more reliable supply of water for California, while also recognizing the unique values of the Delta.

5. Requires the Commission to select at least one individual to serve as a watermaster who will be charged with the responsibility of enforcing all laws that are relevant to the successful implementation of the Bay-Delta Conservation Plan. The watermaster will notify the Commission of any action of the Natural Resources Agency, the state board, or any other governmental entity that is consistent with the law. Watermaster decisions may be appealed by an affected party to the chair of the state board. The chair may stay decisions if he/she determines that the decision of the watermaster was not supported by substantial evidence in the record. An order of the chair of the state board pursuant to this subdivision that stays an order of the watermaster will be set for hearing before the full state board at the earliest possible meeting.
6. Requires the Commission to establish and impose a per-acre-foot fee on water diversions within the Sacramento-San Joaquin Delta watershed, and a fee on any water conveyed through or around the Sacramento-San Joaquin Delta. The costs of the Commission to implement this bill is to be paid, upon appropriation by the Legislature, from this fee or similar fee revenues collected by another state agency.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

**SUPPORT:** (Verified 6/1/09) (prior version of the bill)

Natural Resources Defense Council

**OPPOSITION:** (Verified 6/1/09) (prior version of the bill)

Association of California Water Agencies

**ARGUMENTS IN SUPPORT:** According to the author, “The ongoing environmental collapse of the California Bay-Delta, if not reversed, will result in ecosystem losses that threaten the water supplies of millions of Californians, agriculture, and protected species such as salmon and other species. The Legislature is considering many bills on the Bay-Delta in this term, but SB 229 is unique in that it focuses on only short-term, positive steps that can be achieved promptly. This bill adopts the recommendation of the Delta Vision Task Force that two co-equal goals should be adopted:

CONTINUED

ecosystem restoration and improvements to water supply reliability. It does not address long-term governance, a peripheral canal, possible bond financing, or land use reforms. Instead, it focuses only on ecosystem planning, short-term funding, and enforcement of existing laws.”

**ARGUMENTS IN OPPOSITION:** According to the Association of California Water Agencies (ACWA), “While it is possible that a permanent Delta Governance structure may not be negotiated in the 2009 legislative session and an interim approach as contemplated by SB 299 may be required, ACWA respectfully submits that the approach in SB 229 is overbroad and over reaching.” ACWA raises particular concerns with (1) not being clear whether the Bay Delta Conservation Plan discussed in this bill is the same as the Bay Delta Conservation Plan being developed by the NRA, delta water exporters, and others, (2) the appointment of a watermaster, and (3) fees.

CTW:mw 6/1/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

## **SENATE COMMITTEE ON NATURAL RESOURCES AND WATER**

**Senator Fran Pavley, Chair  
2009-2010 Regular Session**

**BILL NO:** SB 458

**AUTHOR:** Wolk

**VERSION:** April 2, 2009

**DUAL REFERRAL:** No

**SUBJECT:** Conservancies: Sacramento-San Joaquin Delta Conservancy.

**HEARING DATE:** April 14, 2009

**URGENCY:** No

**CONSULTANT:** Dennis O'Connor

**FISCAL:** Yes

### **BACKGROUND AND EXISTING LAW**

Existing law authorizes various conservancies to acquire, manage, direct the management of, and conserve public lands in the state. In order to promote the conservation of the state's resources, the state Legislature has created nine conservancies:

1. Baldwin Hills Conservancy
2. California Tahoe Conservancy
3. Coachella Valley Mountains Conservancy
4. San Diego River Conservancy
5. San Gabriel & Lower Los Angeles Rivers & Mountains Conservancy
6. San Joaquin River Conservancy
7. Santa Monica Mountains Conservancy
8. Sierra Nevada Conservancy
9. State Coastal Conservancy

As state departments, all conservancies, with the exception of Coachella, are run by a board with a state majority. Many of the state-appointed members on other boards, however, are limited to local representatives.

Under the Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992, the legal delta is defined to include specific lands within Contra Costa, Sacramento, San Joaquin, Solano, Yolo, Alameda.

### **PROPOSED LAW**

This bill would establish the Sacramento-San Joaquin Delta Conservancy

The purpose of the conservancy would be to support efforts that advance both environmental protection and the economic well-being of Delta residents in a complementary manner, including:

- Enhance habitat and habitat restoration.
- Protect agriculture and working landscapes.
- Increase recreation and public access in the Delta, including linkages to areas outside the Delta.
- Promote tourism and economic vitality in the Delta.
- Promote Delta legacy communities.



- Protect historical and cultural resources.
- Assist local entities in the implementation of their Habitat Conservation Plans (HCPs) and Natural Community Conservation Plans (NCCPs).
- Facilitate safe harbor agreements for adjacent landowners.
- Promote environmental education.

The conservancy's jurisdiction would be limited to the legal Delta.

The board would consist of 11 voting members and four nonvoting members.

The 11 voting members of the board would be:

- The Secretary of the Natural Resources Agency, or his or her designee.
- The Director of Finance, or his or her designee.
- The chairperson of the Delta Protection Commission, or his or her designee.
- One public member appointed by the Contra Costa County Board of Supervisors, who is a resident of the county.
- One public member appointed by the San Joaquin County Board of Supervisors, who is a resident of the county.
- One public member appointed by the Sacramento County Board of Supervisors, who is a resident of the county.
- One public member appointed by the Solano County Board of Supervisors, who is a resident of the county.
- One public member appointed by the Yolo County Board of Supervisors, who is a resident of the county.
- One public member appointed by the Governor.
- One public member appointed by the Senate Committee on Rules.
- One public member appointed by the Speaker of the Assembly.

The four nonvoting members would be:

- A designee of the San Francisco Bay Conservation and Development Commission for coordination purposes.
- A designee of the State Coastal Conservancy for coordination purposes.
- One Member of the Senate and one Member of the Assembly, to the extent that this participation is not incompatible with their positions as Members of the Legislature. The appointed Members shall represent a district that encompasses a portion of the Delta.

The terms of the members would be:

- The public member appointed by the Governor shall serve at his or her pleasure.
- The locally appointed public members shall serve for a term of four years, with a two-term limit.
- The public members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall serve for a term of four years, with a two-term limit.
- The Members of the Senate and Assembly shall serve for a term of four years, with a two-term limit.

The Conservancy would have the authority to:

- provide grants and loans to state agencies, local public agencies, nonprofit organizations, and tribal organizations to further the goals of the conservancy.



- acquire from willing sellers or transferors interests in real property and improve, lease, or transfer interests in real property
- enter into an agreement with a public agency, nonprofit organization, or private entity, for the construction, management, or maintenance of facilities authorized by the conservancy
- acquire water or water rights to support the goals of the conservancy

The Conservancy would not have the power of eminent domain.

The Conservancy, within two years of hiring an executive director, would be required to create and adopt a strategic plan to achieve the goals of the conservancy. The plan would be required to:

- Describe its interaction with local, regional, state, and federal land use, recreation, water and flood management, and habitat conservation and protection efforts within and adjacent to the Delta.
- Establish priorities and criteria for projects and programs, based upon an assessment of program requirements, institutional capabilities, and funding needs throughout the Delta.
- Be consistent with the Resource Management Plan developed by the Delta Protection Commission and the Central Valley Flood Protection Plan.

The bill would create the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury. Moneys in the fund would be available, upon appropriation, for the purposes of the conservancy.

The bill would make numerous find and declarations regarding the unique values of the Delta and the advantage of having a conservancy.

## **ARGUMENTS IN SUPPORT**

According to the author, “California has a long and successful history with conservancies and there is widespread agreement that such an entity would succeed in the Delta as long as there is adequate local input and control. Conservancies are able to address unique solutions in communities of key interest. They are a flexible arrangement with tools to fit the situation. They have been as varied as the large Coastal Conservancy to the Baldwin Hills Conservancy and provide a forum for state and local interests to work to find solutions and raise funds to solve problems and improve communities.”

“The Sacramento-San Joaquin Delta Conservancy will support efforts that advance both environmental protection and the economic well-being of Delta residents in a complementary manner.”

**ARGUMENTS IN OPPOSITION:** None Received

## **COMMENTS**

County Appointments. Local governments typically do not appoint public members to state agencies. In order to get local input on such boards, usually one of two methods is employed. Either (1) the appointment is an elected member of a board of supervisors or city council, selected by the board or council, or (2) the board or council provides a list of nominees from which the Governor selects and appoints the public member. Should this bill move forward, the author should consider changing the appointment process to one of the two options.

### Reports to the Legislature

Conservancies typically report to the Legislature on their activities and progress on a regular basis. Should this bill move forward, the author should consider requiring annual or some other regular report to the Legislature.

Related Bills: Each of the following bills address one or more aspect of problems the Delta.

#### *Senate:*

SB 12 (Simitian)	A compressive bill that largely mirrors the recommendations of the Blue Ribbon Task Force
SB 229 (Pavley)	Institutes an interim governance structure for the Delta
SB 457 (Wolk)	A compressive bill that builds on many, but not all, of the recommendations of the Blue Ribbon Task Force

#### *Assembly:*

AB 13 (Salas)	Establishes a Sacramento-San Joaquin Delta Conservancy.
AB 39 (Huffman)	Intended to become a comprehensive bill on the Delta

**SUGGESTED AMENDMENTS:** None

### **SUPPORT**

Metropolitan Water District of Southern California (If Amended)  
Natural Resources Defense Council (In Concept)  
Planning and Conservation League  
The Nature Conservancy  
Trust for Public Land

### **OPPOSITION**

None Received

**Senate Appropriations Committee Fiscal Summary**  
**Senator Christine Kehoe, Chair**

**SB 458 (Wolk)**

**Hearing Date:** 05/28/2009

**Amended:** 04/2/2009

**Consultant:** Brendan McCarthy

**Policy Vote:** NR&W, 7-3

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**BILL SUMMARY:** SB 458 would establish a new conservancy in state government, with jurisdiction limited to the Sacramento/San Joaquin River Delta.

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<b>Fiscal Impact (in thousands)</b>				
<b><u>Major Provisions</u></b>	<b><u>2009-10</u></b>	<b><u>2010-11</u></b>	<b><u>2011-12</u></b>	<b><u>Fund</u></b>
Annual staff costs	Up to \$15,000 per year			Special *
Developing a strategic plan	Up to \$150			Special *
Making grants and acquiring property	Potentially in the hundreds of millions			Special *

\* New special fund. Source of revenues for the new fund are unknown.

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**STAFF COMMENTS: Suspense file.**

During its 2005-2006 Regular Session, the Legislature passed and the Governor signed AB1200 (Laird), SB1574 (Kuehl), and AB1803 (Committee on Budget). Together, these bills required an assessment of the potential impacts on water supplies of catastrophic failures in the Delta, identification and evaluation of options to protect water supplies and the ecosystem of the Delta, the development of a vision for a sustainable Delta, and a strategic plan to achieve a sustainable Sacramento-San Joaquin Delta. Additionally, SB 1574 created a Delta Vision Committee to develop the vision and strategic plan.

On September 28, 2006, the Governor issued an Executive Order that, among other things, established a Blue Ribbon Task Force and directed it to develop a vision for the sustainable management of the Delta.

In October 2008, the Blue Ribbon Task Force published its *Delta Vision Strategic Plan*. According to the plan, in order to achieve a healthy Delta and a more reliable water system for Californians, policy makers must:

- Legally acknowledge the co-equal goals of restoring the Delta ecosystem and creating a more reliable water supply for California.
- 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.
- Restore the Delta ecosystem as the heart of a healthy estuary.
- Promote statewide water conservation, efficiency, and sustainable use.

- Build facilities to improve the existing water conveyance system and expand statewide storage, and operate both to achieve the co-equal goals.
- Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and strategic levee investments.
- Establish a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve these goals.

The report of the Blue Ribbon Task force can be considered a starting point for several bills under consideration by this committee relating to the Delta.

This bill would establish the Sacramento-San Joaquin Delta Conservancy in state government. The purpose of the Conservancy would be to support efforts that advance both environmental protection and the economic well-being of Delta residents. The Conservancy would be governed by a board of eleven voting members and four non-voting members. Because the scope of activities that would be undertaken by the Conservancy are unknown, costs to operate the Conservancy can not be determined. Staff notes that the State Coastal Conservancy, an existing body with a substantial geographic jurisdiction and complex regulatory issues has an ongoing budget for staff and operations of more than \$11 million per year.

The bill would authorize the Conservancy to provide grants and loans to various entities and authorize it to acquire property from willing sellers. The bill creates a new special fund for these purposes, but does not specify a revenue source for the fund. Staff notes that the CalFed program has spent over \$570 million over the past decade on programs relating to ecosystem restoration in the Delta. While the scope of activities authorized under this bill is unknown, efforts to protect environmental attributes of the Delta in the past have proved very costly.

The Conservancy would be required to develop a strategic plan that would be consistent with Resource Management Plan developed by the Delta Protection Commission and the Central Valley Flood Protection Plan.

Staff notes that this bill is one of several bills relating to the Delta that will be before this committee, including SB 12 (Simitian), SB 229 (Pavley), and SB 457 (Wolk).

**SENATE RULES COMMITTEE**

SB 458

Office of Senate Floor Analyses

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**THIRD READING**

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Bill No: SB 458

Author: Wolk (D), et al

Amended: 6/3/09

Vote: 21

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SENATE NATURAL RES. & WATER COMMITTEE: 7-3, 4/14/09

AYES: Pavley, Kehoe, Leno, Padilla, Simitian, Wiggins, Wolk

NOES: Cogdill, Hollingsworth, Huff

NO VOTE RECORDED: Benoit

SENATE APPROPRIATIONS COMMITTEE: 7-5, 5/28/09

AYES: Kehoe, Corbett, DeSaulnier, Hancock, Leno, Oropeza, Yee

NOES: Cox, Denham, Runner, Walters, Wyland

NO VOTE RECORDED: Wolk

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**SUBJECT:** Conservancies: Sacramento-San Joaquin Delta Conservancy

**SOURCE:** Author

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**DIGEST:** This bill establishes a new conservancy in state government, with jurisdiction limited to the Sacramento-San Joaquin River Delta, as specified.

**ANALYSIS:** Existing law authorizes various conservancies to acquire, manage, direct the management of, and conserve public lands in the state. In order to promote the conservation of the state's resources, the state Legislature has created nine conservancies:

1. Baldwin Hills Conservancy.
2. California Tahoe Conservancy.

CONTINUED

3. Coachella Valley Mountains Conservancy.
4. San Diego River Conservancy.
5. San Gabriel & Lower Los Angeles Rivers & Mountains Conservancy.
6. San Joaquin River Conservancy.
7. Santa Monica Mountains Conservancy.
8. Sierra Nevada Conservancy.
9. State Coastal Conservancy.

As state departments, all conservancies, with the exception of Coachella, are run by a board with a state majority. Many of the state-appointed members on other boards, however, are limited to local representatives.

Under the Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992, the legal delta is defined to include specific lands within Contra Costa, Sacramento, San Joaquin, Solano, Yolo, Alameda.

This bill establishes the Sacramento-San Joaquin Delta Conservancy (Conservancy).

The purpose of the Conservancy is to support efforts that advance both environmental protection and the economic well-being of Delta residents in a complementary manner.

The Conservancy's jurisdiction will be limited to the legal Delta.

The Conservancy Board (Board) will consist of 11 voting members and four nonvoting members appointed by the Governor and confirmed by the Senate.

The Conservancy, within two years of hiring an executive director, will be required to create and adopt a strategic plan to achieve the goals of the conservancy. The plan is required to:

1. Describe its interaction with local, regional, state, and federal land use, recreation, water and flood management, and habitat conservation and protection efforts within and adjacent to the Delta.
2. Establish priorities and criteria for projects and programs, based upon an assessment of program requirements, institutional capabilities, and funding needs throughout the Delta.
3. Be consistent with the Resource Management Plan developed by the Delta Protection Commission and the Central Valley Flood Protection Plan.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

The provisions of the bill will be implemented only upon appropriation by the Legislature of funds for the purposes of this division. The Conservancy shall not appoint an executive officer, employ any other staff, execute any contract, or incur any other cost or obligation, until the Legislature appropriates money for these purposes.

**SUPPORT:** (Verified 6/2/09)

Natural Resources Defense Council  
Planning and Conservation League  
The Nature Conservancy  
Trust for Public Land

**ARGUMENTS IN SUPPORT:** According to the author's office, "California has a long and successful history with conservancies and there is widespread agreement that such an entity would succeed in the Delta as long as there is adequate local input and control. Conservancies are able to address unique solutions in communities of key interest. They are a flexible arrangement with tools to fit the situation. They have been as varied as the large Coastal Conservancy to the Baldwin Hills Conservancy and provide a forum for state and local interests to work to find solutions and raise funds to solve problems and improve communities."

"The Sacramento-San Joaquin Delta Conservancy will support efforts that advance both environmental protection and the economic well-being of Delta residents in a complementary manner."

CONTINUED

CTW:do 6/2/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*



PROPOSED CONFERENCE REPORT NO. 1 - September 9, 2009

SB 458 (Steinberg and Simitian)

As Amended July 9, 2009

Majority vote

SENATE: 24-10 (June 3, 2009)

ASSEMBLY: (July 13, 2009)

(vote not relevant)

SENATE CONFERENCE VOTE: 4-0ASSEMBLY CONFERENCE VOTE: 4-0

Ayes: Steinberg, Pavley, Padilla, Florez

Ayes: Bass, Caballero, Huffman, Solorio

Original Committee Reference: W., P. & W.SUMMARY: Modifies the Delta Protection Commission (DPC) and creates the Sacramento-San Joaquin Delta Conservancy. Specifically, the conference committee amendments:

- 1) Reconstitute the Delta Protection Commission.
  - a) Reduce membership of the DPC from 23 to 15, eliminating several state agencies.
  - b) Designate the DPC chair as a voting member of the Delta Stewardship Council (council).
  - c) Changes nature of DPC advisory committees
- 2) Require DPC to create a regional economic sustainability plan, including creation of a Delta Investment Fund in the State Treasury.
- 3) Authorize DPC To Make Recommendations to Delta Stewardship Council (Council) to:
  - a) Authorize DPC to review, comment, and make recommendations to Council on any significant project or proposed project in Delta Plan that may affect the unique cultural, recreational, and agricultural values within the primary and the secondary zones;
  - b) Include specified issues in DPC's review and comment; and,
  - c) Require Council to consider DPC recommendations and determine, in Council discretion, if recommendations are feasible and consistent with the objectives of the Delta Plan.
- 4) Require the DPC, by July 2010, to prepare and submit to the Legislature recommendations regarding the potential expansion of or change to the primary zone.
- 5) Create a new Sacramento-San Joaquin Delta Conservancy (Conservancy).
  - a) Authorize conservancy, as a primary state agency for ecosystem restoration, to support efforts that advance environmental protection and the economic well-being of Delta residents, including specified activities;
  - b) Create conservancy board with 11 voting members of the board:

- i) The Secretary of the Natural Resources Agency, or designee;
  - ii) The Director of Finance, or designee;
  - iii) One member each of the board, or a designee, who is appointed by the Contra Costa, Sacramento, San Joaquin, Solano, and Yolo County Boards of Supervisors, who is a resident of each respective county;
  - iv) Two public members, appointed by the Governor';
  - v) One public member appointed by the Senate Committee on Rules; and,
  - vi) One public member appointed by the Speaker of the Assembly.
- c) Designate nonvoting members of the board and nonvoting liaison advisers who would serve in an advisory, nonvoting capacity;
- d) Establish the terms of the board members as follows:
- i) The public member appointed by the Governor shall serve at his or her pleasure;
  - ii) The locally appointed members and alternates shall serve at the pleasure of the appointing board of supervisors;
  - iii) The public members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall serve for a term of four years, with a two-term limit; and,
  - iv) The Members of the Senate and Assembly shall serve for a term of four years, with a two-term limit.
- e) Require the voting members of the board to elect a chairperson and vice chairperson, and other officers as necessary, from among the voting members.
- i) The chairperson must be from among county supervisor members; and,
  - ii) If the office of the chairperson or vice chairperson becomes vacant, a new chairperson or vice chairperson would be elected by the voting members of the board to serve for the remainder of the term.
- f) Provide the conservancy administrative powers, including authority to hire staff, adopt rules and procedures for conduct of the Conservancy's business, establish advisory committees, and enter into contracts.
- 6) Establish and limit the Conservancy's powers and duties:
- a) Authorize conservancy, as a primary state agency for ecosystem restoration, to support efforts that advance environmental protection and the economic well-being of Delta residents, including specified activities;

- b) Limit the jurisdiction and activities of the conservancy to the Delta and Suisun Marsh except if the board makes certain findings;
- c) Establish the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury, which may provide funding for ecosystem restoration projects consistent with the Conservancy's strategic Plan or for "regional sustainability" consistent with the Delta Protection Commission's "Regional Sustainability and Land Use Plan;"
- d) Authorize Conservancy, subject to specified conditions, to acquire, manage and transfer interests in property and water rights, with a preference for conservation easements;
- e) Authorize the Conservancy to accept funding from a broad range of sources, including creation and management of endowments;
- f) Require the Conservancy to develop a strategic plan consistent with the Delta Plan, Delta Protection Commission's Regional Sustainability and Land Use Plan, the Central Valley Flood Protection Plan, the Suisun Marsh Preservation Act, and the Habitat Management, Preservation and Restoration Plan for the Suisun Marsh;
- g) Authorize the Conservancy to collaborate with other organizations and impose certain conditions on any grants it makes; and,
- h) Prohibits the Conservancy from regulating land-use, exercising power over water rights held by others, or exercising the power of eminent domain.

EXISTING LAW establishes a Delta Protection Commission and regional conservancies in various areas of the state.

AS PASSED BY THE SENATE, this bill created the Conservancy.

The Assembly amendments removed the bill's substantive provisions and inserted legislative intent to create a conservancy and modify the DPC.

FISCAL EFFECT: Unknown

COMMENTS: This bill addresses two recommendations of the Delta Vision Strategic Plan, regarding the DPC and a new conservancy.

Delta Protection Commission: This bill makes a limited number of changes to the DPC, making it more clearly a local voice for the Delta in the context of other bills' fundamental changes to Delta governance (SB 12/Simitian). The key DPC changes include: removing state agency members, DPC development of a Delta economic sustainability plan, its duties as a commenter to the Delta Stewardship Council, and study of expanding the Delta's primary zone where DPC oversees local land-use decisions.

Conservancy Authority: This bill creates the Delta Conservancy as a "state agency to work in collaboration and cooperation with local governments and interested parties." The Legislature created most state conservancies with the primary purpose of conserving, restoring or enhancing natural resources. Delta Vision recommends the creation of a conservancy "for implementing

and coordinating Delta ecosystem enhancement and related revitalization projects.” This bill makes the conservancy "a primary state agency" for ecosystem restoration, but does not set ecosystem restoration as the conservancy's primary mission.

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

FN: 0003145

**SENATE RULES COMMITTEE****SB 458**

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**UNFINISHED BUSINESS**

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Bill No: SB 458

Author: Wolk (D), et al

Amended: 7/9/09

Vote: 21

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**SENATE NATURAL RES. & WATER COMMITTEE:** 7-3, 4/14/09

AYES: Pavley, Kehoe, Leno, Padilla, Simitian, Wiggins, Wolk

NOES: Cogdill, Hollingsworth, Huff

NO VOTE RECORDED: Benoit

**SENATE APPROPRIATIONS COMMITTEE:** 7-5, 5/28/09

AYES: Kehoe, Corbett, DeSaulnier, Hancock, Leno, Oropeza, Yee

NOES: Cox, Denham, Runner, Walters, Wyland

NO VOTE RECORDED: Wolk

**SENATE FLOOR:** 24-10, 6/3/09AYES: Alquist, Calderon, Corbett, Correa, DeSaulnier, Florez, Hancock,  
Harman, Kehoe, Leno, Liu, Lowenthal, Maldonado, Negrete McLeod,  
Oropeza, Padilla, Pavley, Romero, Simitian, Steinberg, Wiggins, Wolk,  
Wright, YeeNOES: Aanestad, Ashburn, Cox, Denham, Dutton, Hollingsworth, Huff,  
Strickland, Walters, WylandNO VOTE RECORDED: Benoit, Cedillo, Cogdill, Ducheny, Runner,  
Vacancy**ASSEMBLY FLOOR:** 45-23, 7/13/09 - See last page for vote

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**SUBJECT:** Sacramento-San Joaquin Conservancy: Delta Protection  
Commission**SOURCE:** Author

CONTINUED

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**DIGEST:** This bill states the intent of the Legislature to enact legislation to establish a Sacramento-San Joaquin Delta Conservancy and to modify the Delta Protection Commission.

Assembly Amendments reduce the language to single lines of intent.

This bill is a vehicle to be used for a comprehensive reform of the state's water policy.

**ANALYSIS:** Existing law authorizes various conservancies to acquire, manage, direct the management of, and conserve public lands in the state. The Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992 creates the 23-member Delta Protection Commission (Commission) and requires the Commission to prepare and adopt a comprehensive long-term resource management plan for specified lands within the Sacramento-San Joaquin Delta.

This bill states the intent of the Legislature to enact legislation to establish a Sacramento-San Joaquin Delta Conservancy and to modify the Delta Protection Commission.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**ASSEMBLY FLOOR:**

AYES: Ammiano, Arambula, Beall, Blumenfield, Brownley, Caballero, Charles Calderon, Carter, Chesbro, Coto, Davis, De La Torre, De Leon, Eng, Evans, Feuer, Fong, Fuentes, Furutani, Hall, Hayashi, Hernandez, Hill, Huffman, Jones, Krekorian, Lieu, Bonnie Lowenthal, Ma, Mendoza, Monning, Nava, John A. Perez, V. Manuel Perez, Portantino, Ruskin, Salas, Saldana, Skinner, Solorio, Swanson, Torlakson, Torres, Torrico, Bass

NOES: Adams, Tom Berryhill, Blakeslee, Conway, Cook, DeVore, Duvall, Emmerson, Fuller, Gaines, Garrick, Gilmore, Hagman, Harkey, Huber, Jeffries, Knight, Logue, Miller, Nestande, Nielsen, Silva, Tran

CONTINUED

NO VOTE RECORDED: Anderson, Bill Berryhill, Block, Buchanan,  
Fletcher, Galgiani, Niello, Smyth, Audra Strickland, Villines, Yamada,  
Vacancy

CTW:do 7/14/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*

**SENATE RULES COMMITTEE****SB 458**

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**CONFERENCE COMPLETED**

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Bill No: SB 458

Author: Wolk (D), et al

Amended: Conference Report No. 1 – 9/9/09

Vote: 21

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**CONFERENCE COMMITTEE VOTE:** 8-0, 9/9/09

AYES: Senators Steinberg, Florez, Padilla, and Pavley, Assembly Members Bass, Solorio, Caballero, and Huffman

NO VOTE RECORDED: Senators Aanestad, Cogdill, Huff; Assembly Members Fuller, Huff, Jefferies; and Nielsen

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**SUBJECT:** Sacramento-San Joaquin Conservancy: Delta Protection Commission**SOURCE:** Author

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**DIGEST:** This Conference Committee Amendments delete the prior version of the bill stating the intent of the Legislature to enact legislation to establish a Sacramento-San Joaquin Delta Conservancy and to modify the Delta Protection Commission. The bill now revises and recasts the Delta Protection Act of 1992 by expanding the role of the Delta Protection Commission in Delta Management Planning. It establishes within the Natural Resources Agency the Sacramento – San Joaquin Delta Conservancy to advance environmental protection and the economic well being of the Delta residents. Establishes the Sacramento – San Joaquin Delta Conservancy Fund where monies are to be deposited upon appropriation to finance projects. Lastly the bill becomes operative only if the other bills in the comprehensive water package are enacted AB 39, AB 49, SB 12, and SB 229.

CONTINUED



**ANALYSIS:** Existing law requires various state agencies to administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta. The Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992 (Delta Protection Act) creates the Delta Protection Commission (Commission) and requires the Commission to prepare and adopt a comprehensive long-term resource management plan for specified lands within the Sacramento-San Joaquin Delta. Existing law requires the Secretary of the Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill revises and recasts the provisions of the Delta Protection Act to, among other things, reduce the number of Commission members to 15 members, as specified. The bill requires the Commission to appoint at least one advisory committee consisting of representatives from specified entities to provide input regarding the diverse interests within the Delta. The bill requires the Commission to adopt, not alter than July 1, 2011, an economic sustainability plan containing specified elements and requires the Commission to review and, as determined to be necessary, amend the plan every five years.

The bill requires the Commission to prepare and submit to the Legislature, by July 1, 2010, recommendations on the potential expansion of or change to the primary zone or the Delta.

The bill establishes the Delta Investment Fund in the State Treasury. Monies in the fund, upon appropriation by the Legislature, is required to be expended by the Commission to implement the regional economic sustainability plan.

The bill establishes the Natural Resources Agency the Sacramento-San Joaquin Delta Conservancy (Conservancy). The Conservancy is required to act as the primary state agency to implement ecosystem restoration in the Delta and to support efforts that advance environmental protection and the economic well-being of Delta residents. The bill specifies the composition of the Conservancy and grant certain authority to the Conservancy. Including the authority to acquire real property interests from willing sellers or transferors. The Conservancy is required to use conservation easements to accomplish ecosystem restoration whenever feasible. The Conservancy is required to prepare and adopt a strategic plan to achieve the goals of the

Conservancy. The strategic plan is required to be consistent with the Delta Plan and certain other plans. The bill establishes the Sacramento-san Joaquin Delta Conservancy Fund in the State Treasury. Monies in the fund is available, upon appropriation, to finance projects, including ecosystem restoration and economic sustainability projects.

These provisions become operative if AB 39, AB 49, SB 12, and SB 229 of the 2009-10 Regular Session of the Legislature, relating to water use and resource management, are each enacted and become effective on or before January 1, 2010.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

DLW:do 9/11/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*

**SENATE RULES COMMITTEE****SB 458**

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**CONFERENCE COMPLETED**

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Bill No: SB 458

Author: Steinberg (D)

Amended: Conference Report No. 1 – 9/9/09

Vote: 21

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**CONFERENCE COMMITTEE VOTE:** 8-0, 9/9/09

AYES: Senators Steinberg, Florez, Padilla, and Pavley, Assembly Members Bass, Solorio, Caballero, and Huffman

NO VOTE RECORDED: Senators Aanestad, Cogdill, Huff; Assembly Members Fuller, Huff, Jefferies; and Nielsen

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**SUBJECT:** Sacramento-San Joaquin Conservancy: Delta Protection Commission**SOURCE:** Author

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**DIGEST:** This Conference Committee Amendments delete the prior version of the bill stating the intent of the Legislature to enact legislation to establish a Sacramento-San Joaquin Delta Conservancy and to modify the Delta Protection Commission. The bill now revises and recasts the Delta Protection Act of 1992 by expanding the role of the Delta Protection Commission in Delta Management Planning. It establishes within the Natural Resources Agency the Sacramento – San Joaquin Delta Conservancy to advance environmental protection and the economic well being of the Delta residents. Establishes the Sacramento – San Joaquin Delta Conservancy Fund where monies are to be deposited upon appropriation to finance projects. Lastly the bill becomes operative only if the other bills in the comprehensive water package are enacted AB 39, AB 49, SB 12, and SB 229.

CONTINUED

**ANALYSIS:** Existing law requires various state agencies to administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta. The Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992 (Delta Protection Act) creates the Delta Protection Commission (Commission) and requires the Commission to prepare and adopt a comprehensive long-term resource management plan for specified lands within the Sacramento-San Joaquin Delta. Existing law requires the Secretary of the Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill revises and recasts the provisions of the Delta Protection Act to, among other things, reduce the number of Commission members to 15 members, as specified. The bill requires the Commission to appoint at least one advisory committee consisting of representatives from specified entities to provide input regarding the diverse interests within the Delta. The bill requires the Commission to adopt, not alter than July 1, 2011, an economic sustainability plan containing specified elements and requires the Commission to review and, as determined to be necessary, amend the plan every five years.

The bill requires the Commission to prepare and submit to the Legislature, by July 1, 2010, recommendations on the potential expansion of or change to the primary zone or the Delta.

The bill establishes the Delta Investment Fund in the State Treasury. Monies in the fund, upon appropriation by the Legislature, is required to be expended by the Commission to implement the regional economic sustainability plan.

The bill establishes the Natural Resources Agency the Sacramento-San Joaquin Delta Conservancy (Conservancy). The Conservancy is required to act as the primary state agency to implement ecosystem restoration in the Delta and to support efforts that advance environmental protection and the economic well-being of Delta residents. The bill specifies the composition of the Conservancy and grant certain authority to the Conservancy. Including the authority to acquire real property interests from willing sellers or transferors. The Conservancy is required to use conservation easements to accomplish ecosystem restoration whenever feasible. The Conservancy is required to prepare and adopt a strategic plan to achieve the goals of the

Conservancy. The strategic plan is required to be consistent with the Delta Plan and certain other plans. The bill establishes the Sacramento-san Joaquin Delta Conservancy Fund in the State Treasury. Monies in the fund is available, upon appropriation, to finance projects, including ecosystem restoration and economic sustainability projects.

These provisions become operative if AB 39, AB 49, SB 12, and SB 229 of the 2009-10 Regular Session of the Legislature, relating to water use and resource management, are each enacted and become effective on or before January 1, 2010.

### Background

Delta. For several years, the Delta has suffered a crisis - ecosystem, water supply, levee stability, water quality, policy, program, and litigation. In June 2004, a privately owned levee failed and the State spent nearly \$100 million to fix it and save an island whose property value was far less. In August 2005, the Department of Fish & Game (DFG) reported a trend showing severe decline in the Delta fishery. In 2006, the Legislature reorganized Delta programs and funding under the Resources Agency Secretary. In 2007, a federal judge, acting under the federal Endangered Species Act, declared illegal certain federal biological opinions about near-extinct fish and restricted water exports from the Delta, to the San Francisco Bay Area, the San Joaquin Valley and Southern California. The Governor shortly thereafter called the Legislature into an extraordinary session on water.

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) of 2006 required a cabinet committee to present recommendations for a Delta 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 the recommendations to the Legislature on January 3, 2009.

Legal Framework for Delta: Since statehood, California has asked much of the Delta. Conflicting demands have led to crisis and conflict - between and among agencies, stakeholders and natural resources. The Delta Vision process spent more than 18 months, investigating the Delta, engaging agencies and stakeholders, and thinking carefully about the Deltas challenges and prospects for change. The Task Forces first recommendation

CONTINUED

was to change the fundamental legal framework for the State to make decisions as to its activities in the Delta - encapsulated in two “coequal goals” of “restoring the Delta ecosystem and creating a more reliable water supply for California.”

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

DLW:do 10/8/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*

## **SENATE COMMITTEE ON NATURAL RESOURCES AND WATER**

**Senator Fran Pavley, Chair**  
**2009-2010 Regular Session**

**BILL NO:** SB 457

**AUTHOR:** Wolk

**VERSION:** April 13, 2009

**DUAL REFERRAL:** Local Government

**SUBJECT:** Sacramento-San Joaquin Delta.

**HEARING DATE:** April 14, 2009

**URGENCY:** No

**CONSULTANT:** Dennis O'Connor

**FISCAL:** Yes

### **BACKGROUND AND EXISTING LAW**

In 1992, the Legislature passed and the Governor signed into law, the Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992. The purpose of the Act was to protect regional, state, and national interests in the long-term agricultural productivity, economic vitality, and ecological health of Delta resources, by coordinating and integrating activities by the various agencies whose land use activities and decisions cumulatively impact the Delta. To do so, it created the Delta Protection Commission.

The Commission is a quasi-regulatory body with oversight authority over local land use decisions in the Delta. The Commission consists of 23 members, representing a mix of local elected officials and state agency representatives. The Commission's central task is the preparation and adoption of a comprehensive long-term resource management plan for land uses within the primary zone of the Delta. Once the Commission adopted that plan, each of the local governments within the Delta was required to conform its own general plan to the provisions of the Commission Plan with the Commission approving or rejecting the local government conforming plans.

In December 1994, state and federal agencies, urban and agricultural water users, and environmental advocates signed the Bay Delta Accord. Its three main goals were: develop water quality standards to protect the estuary, coordinate operations of the state and federal water projects, and develop a long-term solution for the delta. The signing of the Accord marked the birth of the CalFed Bay-Delta Program.

To implement the CalFed program, in 2002 the Legislature passed and the Governor signed SB 1653 (Costa). This bill enacted the California Bay-Delta Authority Act, which, among other things, created the California Bay Delta Authority (CBDA). The CBDA is composed of representatives from six state agencies, six federal agencies, seven public members, and one member of the Bay-Delta Public Advisory Committee.

As documented in a 2005 Little Hoover Commission report, the CBDA and CalFed program has not been as successful as originally anticipated. The Commission noted, "Frustration with CalFed is warranted. Because of a faulty design, the CBDA cannot effectively coordinate activities, push agencies to perform, or provide rigorous oversight."



During its 2005-2006 Regular Session, the Legislature passed and the Governor signed Assembly Bill 1200 (Laird), Senate Bill 1574 (Kuehl), and Assembly Bill 1803 (Committee on Budget). Together, these bills required an assessment of the potential impacts on water supplies of catastrophic failures in the delta, identification and evaluation of options to protect water supplies and the ecosystem of the delta, the development of a vision for a sustainable delta, and a strategic plan to achieve a sustainable Sacramento-San Joaquin Delta. Additionally, SB 1574 created a Delta Vision Committee to develop the vision and strategic plan. The Committee is composed of the Secretary of the Resources Agency as chair, and the Secretaries of the Business, Transportation and Housing Agency, Department of Food and Agriculture, and the California Environmental Protection Agency, and the President of the Public Utilities Commission.

On September 28, 2006, the Governor issued an Executive Order that, among other things, established a Blue Ribbon Task Force and directed the Task Force to:

- Develop a vision for the sustainable management of the Delta,
- Report to the to the Delta Vision Committee and Governor its findings and recommendations on its vision for the Delta by January 1, 2008, and
- Develop a strategic plan to implement the delta vision by October 31, 2008.

The Executive Order further directed the Delta Vision Committee to report to the Governor and the Legislature by December 31, 2008 with recommendations for implementing the Delta Vision and Strategic Plan.

October 2008, the Blue Ribbon Task Force published its *Delta Vision Strategic Plan*. According to the plan, in order to achieve a healthy Delta and a more reliable water system for Californians, policy makers must:

- Legally acknowledge the co-equal goals of restoring the Delta ecosystem and creating a more reliable water supply for California.
- 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.
- Restore the Delta ecosystem as the heart of a healthy estuary.
- Promote statewide water conservation, efficiency, and sustainable use.
- Build facilities to improve the existing water conveyance system and expand statewide storage, and operate both to achieve the co-equal goals.
- Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and strategic levee investments.
- Establish a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve these goals.

## **PROPOSED LAW**

This bill would

### **1. Create Delta Stewardship Council in the Natural Resources Agency**

- The Council would have responsibility for the stewardship of the Sacramento-San Joaquin Delta and all its natural resources.
- The council would consist of 9 members:
  - Eight members would be appointed by the Governor, subject to Senate confirmation, serving staggered 5 year terms. The 8 members are to include diverse expertise and



perspectives, policy and resource experts, strategic problem solvers, and individuals having successfully resolved multi-interest conflicts.

- One member would be the Chair of the Delta Protection Commission
- The Council would be required to, among other things:
  - Develop and approve the Delta Stewardship Plan (see below)
  - Determine appeals from the Delta Protection Commission regarding whether a project proposed by or approved by a state agency or local government that may impact the Delta is consistent with the plan.
  - Assume responsibility for any conservation or habitat management plan developed for the Delta by the state or federal government.
  - Establish a process to ensure federal and state consistency with the plan.
  - Review and determine consistency of the Bay Delta Conservation Plan or EIR for any significant Delta Conveyance facility with this Division(?)
  - Be designated a trustee agency pursuant to the California Environmental Quality Act (CEQA).
  - Determine the consistency of major water, road, railroad, utility, and levee infrastructure projects in the Delta with the plan, and communicate that determination to the responsible agencies.
  - Assess policies applied outside the Delta that are critical to meeting Delta Vision goals and convey the results of that assessment to the responsible agency.
  - Work with the Delta Science and Engineering Program and the Delta Science and Engineering Board on adopting sound principles of adaptive management.
  - Receive and allocate funds to advance policies and programs related to the Delta.
  - Include issues of environmental justice in the plan and in future Delta decision-making.
  - Adopt procedures for use of alternative approaches to dispute resolution, such as joint fact finding and arbitration to reduce reliance on litigation and the courts.
  - Have the power to sue to ensure compliance with the plan.
  - Establish policies and procedures that ensure that day-to-day operation of water export systems is consistent with the plan.

2. Require the Council to develop and approve the Delta Stewardship Plan as follows:

- The purpose of the Plan would be to guide and shape management of the Delta to ensure its revitalization and create a statewide reliable water delivery system.
  - The plan would be intended to meet the primary goals of the Delta Vision.
  - The plan would build upon and integrate other plans, including the delta Protection Commission Resource management Plan and the Central Valley Flood protection Plan, modifying and extending them as needed to meet (its) responsibilities.
- The plan would be intended to:
  - Incorporate any species protection requirements that impact Delta resources.
  - Incorporate requirements for water flow and water quality in the Delta that achieve the coequal goals.
  - Define state land use interests in the Delta, especially those that impact the ecosystem, water supply reliability, and flood concerns.
  - Provide principles and procedures for adaptive management.

- Provide for the modeling, data collection, management, monitoring, analysis, and interpretation to support policy decision-making.
  - Ensure flexibility and resiliency in managing the Delta.
  - Incorporate the recommendations of the Delta Vision Strategic Plan.
  - Include an accurate up-to-date assessment of water supply availability.
  - Articulate a detailed financing plan that identifies costs, benefits, and revenue sources.
  - Serve as a foundational document for a programmatic environmental impact statement or environmental impact report, as well as any projects undertaken requiring permits pursuant to the California Environmental Quality Act (CEQA) or the federal National Environmental Policy Act (NEPA).
- The plan would be developed as follows:
    - Start by assessing existing plans and planning efforts and use elements which are consistent with the goals of the Delta Vision.
    - Coordinate with stakeholders as well as state, federal, and local agencies.
    - Encourage the participation of local, state, and federal agencies to help to better integrate their responsibilities and capacities into the plan.
- The plan would be required to recognize and address the uncertainty involved in Delta decision-making and include an adaptive management plan. The adaptive management plan would be required to do all of the following:
    - Synthesize existing knowledge about the Delta as a physical system.
    - State hypotheses about the effects of management actions recommended in the plan on the ecosystem, water supply, and other values.
    - Recommend to the council additional management actions expected to yield desired ecosystem or water supply outcomes or designed to generate useful knowledge about the Delta.
    - Design monitoring programs to systematically gather needed data.
    - Identify and put in place the processes by which the data will be synthesized, hypotheses evaluated, and new management actions recommended.
    - On the five-year cycles on which the plan is reviewed and updated, the results should be integrated into a report on the knowledge of the Delta, an assessment of the success of current policies and management, and the identification, assessment, and recommendation of possible changes in policies or management.
- The council would be required to adopt the plan on or before January 1, 2011.
  - Until the plan is adopted pursuant to this division, the Delta Vision strategic plan would serve as the interim plan for the Delta.
3. Require the council by March 1, 2010, to appoint a Delta Science and Engineering Board and create a Delta Science and Engineering Program.
    - Program would be a replacement for, and a successor to, the CALFED Science Program, and that the Board would be a replacement for the CALFED Independent Science Board.
    - The board would consist of between 12 and 20 individuals with natural science, social science, engineering, and policy expertise. Members could serve a maximum of two five-

year terms. Lead scientists appointed by the council would have a rotating appointment of three years. Lead scientists would be formally engaged by an agency other than the state.

- In implementing the program, the Board would, among other things:
    - Research critical scientific issues of both the physical Delta and elsewhere in the state relevant to Delta management.
    - Organize, assess, and synthesize the best available science for policymakers and the council.
    - Review all major projects undertaken to advance the goals of the Delta Vision.
    - Conduct independent science and engineering reviews of the work of government agencies or consultant work upon the request of the council, the conservancy, or other state agencies.
4. Require the Delta Protection Commission to:
- Revise all of its plans and policies to be consistent with the Delta Stewardship Plan.
  - Review and certify all city and county general plans for consistency with the resource management plan and the Delta Stewardship Plan.
  - Exercise direct consistency determination authority over development proposals in the primary zone.
  - Review, hold public hearings and receive testimony, and provide recommendations to the council on all proposed projects subject to approval by the council.
  - Develop a regional economic development plan.
5. Create the Delta Stewardship Fund
- The Commission would be required to deposit in the fund any moneys received from federal, state, local, and private sources for Delta stewardship.
  - Moneys in the fund would be available, upon appropriation, for regional economic development consistent with the Delta Stewardship Plan.
6. Make numerous findings and declarations regarding the Delta, its importance to California, the numerous threats to the Delta, the consequences of *Status Quo*, and policies that should be incorporated into state planning, programmatic, and regulatory actions.
7. Impose a state-mandated local program by requiring all general plans of cities and counties within the Delta to be consistent with the Delta Stewardship Plan.

## **ARGUMENTS IN SUPPORT**

According to the Author, “SB 457, the Sacramento-San Joaquin Delta Stewardship Act, establishes the California Delta Stewardship Council to balance the tri-equal goals of the Delta ecosystem, water supply reliability and the Delta as a place by:

- Developing a stewardship plan
- Determining consistency of any project that may impact the Delta with the stewardship plan
- Receiving and allocating funds for the Delta

SB 247 puts the Delta community as an equal in policy and funding decisions in the Delta by requiring the needs of fish and water supply be balanced with local needs.”

## **ARGUMENTS IN OPPOSITION**

According to the Association of California Water Agencies (ACWA), while they support a new model of governance for the Delta, many of the elements in this bill are of concern. In particular, “ACWA is not convinced that a new overarching body with broad authority over state and federal agencies is necessary.”

## **COMMENTS**

Work In Progress. This bill, like most of the other bills addressing the Delta, is still evolving. Consequently, there are some inconsistencies and other technical issues within the bill. Should this bill move forward, the Committee may wish to ask the Author to commit to working with Committee staff to resolve those technical issues as the bill progresses.

Also, this bill, like most of the other bills addressing the Delta, contains pages upon pages of Legislative findings and declarations. While findings and intent statements are occasionally helpful in interpreting statutes, one must question whether all such statements in this bill are necessary. Should this bill move forward, the Committee may wish to ask the Author to commit to working with Committee staff to pare down the findings and intent statements to those truly necessary for accurate interpretation of the statutes.

Basic Structure. While the language of the bill is occasionally inconsistent, according to the Author’s office, the basic structure is intended to be as follows:

The Council:

- Develops and approves the Delta Stewardship Plan.
- Hears appeals from the DPC regarding the consistency of major water projects in the Delta with the plan.
- Review and determine consistency of the Bay Delta Conservation Plan or EIR for any significant Delta Conveyance.
- Assume responsibility for any conservation or habitat management plan developed for the Delta by the state or federal government.
- Uses adaptive management to update the plan.

The DPC:

- Revises all of its plans and policies to be consistent with the Delta Stewardship Plan.
- Reviews and certifies all city and county general plans for consistency with the resource management plan and the Delta Stewardship Plan.
- Determines the consistency of major water, road, railroad, utility, and levee infrastructure projects in the Delta with the plan.

The Plan:

- Meets the primary goals of the Delta Vision.
- Build upon and integrate other plans, including the delta Protection Commission Resource management Plan and the Central Valley Flood protection Plan, modifying and extending them as needed to meet its responsibilities.
- Incorporates any species protection requirements that impact Delta resources.

- Incorporates requirements for water flow and water quality in the Delta that achieve the coequal goals.
- Defines state land use interests in the Delta, especially those that impact the ecosystem, water supply reliability, and flood concerns.
- Provides principles and procedures for adaptive management.
- Incorporates the recommendations of the Delta Vision Strategic Plan.
- Is updated every 5 years
- Includes, in the 1<sup>st</sup> update, a consideration of the water rights actions taken by the SWRCB to achieve accurate accounting of real water in the Delta.

The Plan is the Key. Everything in this bill tees off from the Delta Stewardship Plan – to the extent the plan fails to adequately address one or more critical issue affecting the delta, the likelihood of successfully achieving a revitalized Delta ecosystem and a reliable water supply for California, while ensuring the Delta remains is a unique and valued area, is diminished.

Elephants in the Room. The Delta Vision efforts have provided needed clarity to many of the critical problems facing the Delta. This bill, like a number of other bills, builds upon the efforts and recommendations of the Blue Ribbon Task Force. However, like the Task Force, it does not directly confront many of the crucial questions regarding the Delta. These include:

1. *To PC, or not to PC: That is the question.* Most, if not all, Delta water exporters believe that a peripheral canal or some other sort of isolated conveyance is essential to provide an adequate and reliable supply of water from the delta. Most, if not all, in-Delta water users believe a peripheral canal would be the demise of the Delta. The environmental community is of mixed minds on the topic. And, the Blue Ribbon Task Force largely punted, calling for a dual conveyance strategy incorporating both a through-Delta and an isolated conveyance strategy.

Disputes about whether DWR has existing authority to build a PC aside, Delta water policy is not well served by being vague. The author of this bill, as well as the authors of the other Delta bills, should consider either explicitly prohibiting a PC, explicitly authorizing a PC, or explicitly delineating the conditions under which such a decision would be made, by whom, using what criteria.

2. *Surface Storage.* Like the conveyance debate, many believe that additional surface storage is essential to provide an adequate and reliable supply of water. Others argue that while additional storage might be helpful, the data supporting additional surface storage is not persuasive, especially if public funds are involved. For a variety of reasons, (some good, some not so good), the CalFed program has yet to complete engineering and financial feasibility studies for any of the five surface storage projects identified in the CalFed ROD.

This is another area calling for plain talk. The author of this bill, as well as the authors of the other Delta bills, should consider either explicitly prohibiting new surface storage as a part of this effort, explicitly authorizing new surface storage, or explicitly delineating the conditions under which such a decision would be made, by whom, using what criteria.

3. *The Big One.* Scientific evidence continues to mount that the Delta in its current form is not sustainable. According to DWR's February 2009 Delta Risk Management Study, under current conditions, there is a greater than 50% chance that within the next 25 years 30 or more islands will fail because of an earthquake or flood. The study further estimates that

repairing those islands would cost \$3.0 – \$4.2 billion, taking 1120 – 1520 days to close all the breaches, and 1,240 – 1,660 days to drain all the islands.

Any plan for the Delta that does not take this potential under explicit consideration is fatally flawed. The author of this bill, as well as the authors of the other Delta bills, should consider, at a minimum, requiring the Delta Plan to explicitly consider the potential for catastrophic levee failure in the delta and further to develop appropriate response plans.

4. *Delta Protection Commission.* The Commission is a quasi-regulatory body with oversight authority over local land use decisions in the Delta. This bill would significantly change the role of the Commission.

It is not at all clear that the current 23 member board is the appropriate structure for this expanded role. The author of this bill, as well as the authors of the other Delta bills, should be encouraged to revisit the current structure of the Commission to determine if a 23 member board with its mix of local and state representatives is the most appropriate for its new role.

5. *CalFed.* This bill would leave intact the California Bay Delta Authority Act. That act was enacted to oversee the implementation of the CalFed Bay Delta Program. Among other things, that Act created the California Bay Delta Authority. The CBDA has not met in nearly two years because of inability to get a quorum.

It is not at all clear whether this bill is intended to completely replace CalFed, supplement CalFed, or operate independently from CalFed. Clarity would be helpful. Moreover, the author of this bill, as well as the authors of the other Delta bills, should be encouraged to consider eliminating the CBDA.

6. *Fish & Game.* Restoring the ecosystem functions of the Delta will require a well functioning, scientifically directed, independent Department of Fish and Game. There is widespread concern that, for a variety of reasons, the Department does not now meet that description, and may not for the foreseeable future.

Reform of DFG is probably beyond the scope of this bill. That said, to not take steps to restore confidence in DFG is probably a recipe for failure.

7. *Existing Authorities.* In order to achieve a revitalized Delta ecosystem and a reliable water supply for California, while ensuring the Delta remains is a unique and valued area, some state and local agencies are going to have to be told “No!” Indeed, one of the principle failures of the California Bay Delta Authority was that it did not have the authority to impose its decisions on others.

For the approach described in this bill to work, some existing authorities of state and local governments (and perhaps the federal government as well) are going to have to be eliminated or otherwise made subservient to implementation of the Delta Plan. Many such agencies are likely to resist. The earlier that the author engages local agencies, the Administration, and the federal government in such discussions, the better.



Related Bills: Each of the following bills address one or more aspect of problems the Delta.

*Senate:*

- SB 12 (Simitian) A compressive bill that largely mirrors the recommendations of the Blue Ribbon Task Force
- SB 229 (Pavley) Institutes an interim governance structure for the Delta
- SB 457 (Wolk) A compressive bill that builds on many, but not all, of the recommendations of the Blue Ribbon Task Force
- SB 458 (Wolk) Establishes a Sacramento- San Joaquin Delta Conservancy

*Assembly:*

- AB 13 (Salas) Establishes a Sacramento-San Joaquin Delta Conservancy.
- AB 39 (Huffman) Intended to become a comprehensive bill on the Delta

**SUGGESTED AMENDMENTS:** None

**SUPPORT**

Natural Resources Defense Council (In Concept)

Planning and Conservation League

**OPPOSITION**

Association of California Water Agencies (Unless Amended)

**SENATE LOCAL GOVERNMENT COMMITTEE**  
**Senator Patricia Wiggins, Chair**

**BILL NO:** SB 457

**AUTHOR:** Wolk

**VERSION:** 4/13/09

**HEARING:** 4/29/09

**FISCAL:** Yes

**CONSULTANT:** Detwiler

***DELTA STEWARDSHIP PLAN AND LAND USE***

**Background and Existing Law**

In 1995, as required by the Delta Protection Act, the Delta Protection Commission adopted a resource management plan for a statutorily designated primary zone of nearly 490,000 acres within the Sacramento-San Joaquin river delta (SB 1866, Johnston, 1992).

Cities and counties in the primary zone have 180 days after the Commission adopts or subsequently amends its resource management plan to submit to the Commission proposed general plan amendments that make their general plans consistent with 11 statutory criteria. The Commission has 60 days to approve the proposed general plan amendments, making 11 documented findings. A city or county then has 120 days to adopt the approved general plan amendments. This general plan consistency requirement applies only to land uses in the Delta's primary zone, and does not apply to land uses in the smaller secondary zone.

The Legislature created a cabinet-level Delta Vision Committee to prepare a Delta Vision and Strategic Plan which the Committee produced in January 2009 (SB 1574, Kuehl, 2006). Governor Schwarzenegger also created a Governor's Delta Vision Blue Ribbon Task Force which released its Delta Vision Strategic Plan in October 2008. The Task Force's report called for a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve its recommended co-equal goals for restoring the Delta ecosystem and creating a more reliable water supply.

**Proposed Law**

Senate Bill 457 creates the Delta Stewardship Council. SB 457 requires the Delta Protection Commission to present a draft Delta Stewardship Plan to the Council by October 1, 2010. The bill tells the Council that it should adopt its new Delta Plan before January 1, 2011. The Council must review and, if necessary, revise its Delta Plan every five years. The Commission must revise its resource management plan to be consistent with the new Delta Stewardship Plan.



**I. Land use planning and development.** SB 457 requires the Commission to require that the general plans of the cities and counties within the Delta must be consistent with the new Delta Stewardship Plan.

General plans. SB 457 requires the Commission to review and certify the city and county general plans for consistency with both the Commission's resource management plan and the Council's Delta Stewardship Plan.

Development proposals. SB 457 requires the Commission to exercise consistency determination authority over development proposals in the primary zone. The Commission must make an affirmative determination that any project approved by a city or county within the primary zone is consistent with both the Commission's resource management plan and the Council's Delta Stewardship Plan.

Proposed projects. SB 457 requires the Commission to hold hearings, receive testimony, and make recommendations to the Council on proposed projects that are subject to the Council's approval: major water, road, railroad, utility, and levee infrastructure projects in the Delta.

**II. Delta governance and programs.** SB 457 contains extensive legislative findings and determinations. SB 457 creates and assigns substantive and fiscal duties to the:

- Delta Stewardship Council.
- Delta Science and Engineering Program.
- Delta Stewardship Fund.

### **Comments**

1. State interest, local decisions. There's no longer any doubt that the Sacramento-San Joaquin River Delta's resources are statewide assets. Both the legislative and executive branches have convinced themselves that stronger institutions and more effective programs are essential to restoring the Delta's ecosystem and creating a more reliable water supply. SB 457 tackles this challenge by creating the Delta Stewardship Council, the Delta Science and Engineering Program, and the Delta Stewardship Fund. The bill uses a three-step approach to carry out its goals: *first*, the bill assigns policy guidance to the Delta Stewardship Council and its Delta Stewardship Plan; *second*, the bill relies on the existing Delta Protection Commission to supervise the integration of these statewide values into the existing county and city general plans; and *third*, the bill leaves direct land use decisions with the Delta's county boards of supervisors and city councils. SB 457 assigns the right roles to the right levels of government.

2. Plans, projects, or both? Existing law requires city and county general plans to be consistent with the Delta Protection Commission's resource manage-

ment plan for the primary zone. SB 457 goes further by requiring the Commission to certify local general plans' consistency with the new Delta Stewardship Plan. Because the bill requires the Council to review and revise its Delta Plan every five years, the Commission must also review local general plans every five years. However, the bill intrudes into local officials' traditional land use prerogatives by requiring the Commission to determine if every local government project in the primary zone is consistent with both the Commission's resource management plan and the Council's new Delta Plan. The Committee may wish to consider the point of these duplicate regional reviews. If a local general plan is consistent with the Commission's resource management plan and the Council's Delta Stewardship Plan, why do regional officials need to review every development proposal?

3. Project-by-project reviews. Responding to the perception that local officials weren't adequately protecting regional and statewide resources, the Legislature created four regional commissions to plan and then regulate land use: the San Francisco Bay Conservation and Development Commission (BCDC), the Tahoe Regional Planning Agency (TRPA), the California Coastal Commission, and the Delta Protection Commission. These statutes generally require new regional plans, require local plans to be consistent with the regional plans, and sometimes require the regional commissions to review development projects and issue permits. These laws spell out how the property owners apply for development permits, how the public officials give public notice and hold hearings on the permit applications, how the commissions decide on these permit applications, how the opponents can appeal the commissions' decisions, and how any plaintiffs can file legal challenges. In contrast, SB 457 simply requires the Delta Protection Commission to exercise direct consistency determination authority over development proposals in the primary zone (page 20, lines 8-12), without explaining the procedures that protect due process rights. The Committee may wish to consider amendments that replace this general assignment with specific procedures that promote managerial transparency and administrative accountability. Should the BCDC statute be the bill's model?

4. Related bills. SB 457 is not the only bill affecting the Delta's resources. On April 29, the Senate Local Government Committee will also consider SB 12 (Simintian). SB 229 (Pavley) and SB 458 (Wolk) are already in the Senate Appropriations Committee. The Assembly is also working on AB 13 (Salas) and AB 39 (Huffman).

5. Double-referred. The Senate Rules Committee ordered the double-referral of SB 457; first to the Senate Natural Resources and Water Committee, then to the Senate Local Government Committee. On April 14, the Senate Natural Resources and Water Committee considered the Delta resource policy questions in SB 457 and then passed the bill on a 7-3 vote. On April 29, the Senate Local Government Committee can consider the bill's effects on local land use planning and decision making.

**Support and Opposition** (4/23/09)

Support: Planning and Conservation League, County of Solano.

Opposition: Association of California Water Agencies.

**Senate Appropriations Committee Fiscal Summary**  
**Senator Christine Kehoe, Chair**

**SB 457 (Wolk)**

**Hearing Date:** 05/28/2009

**Amended:** 05/05/2009

**Consultant:** Brendan McCarthy

**Policy Vote:** NR&W 7-3, LG 3-2

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**BILL SUMMARY:** SB 457 would establish a new Delta Stewardship Council which would be required to adopt a plan to restore the Delta ecosystem and ensure a reliable water supply, determine whether any project approved by a state agency or local government is consistent with the plan, and assume responsibility for any conservation plan for the Delta.

The bill would establish a Delta Science and Engineering Program, with specified responsibilities. The bill would also require the Delta Protection Commission to carry out additional land use responsibilities.

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<b>Fiscal Impact (in thousands)</b>				
<b><u>Major Provisions</u></b>	<b><u>2009-10</u></b>	<b><u>2010-11</u></b>	<b><u>2011-12</u></b>	<b><u>Fund</u></b>
New Council staff	Up to \$3,000 per year			General
Implementation of conservation plans	Potentially in the hundreds of millions			General
New science program	\$10,000 to \$20,000 per year			General
Delta Protection Commission consistency determinations		\$1,500	\$1,500	General
Reimbursable state mandates	Unknown			General

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**STAFF COMMENTS: Suspense file.**

Under current law, the Delta Protection Commission has developed a management plan for land use issues in the Delta. The policies contained in the management plan have been adopted into the general plans of local governments in the Delta. In the event that a local government makes a land use decision that may conflict with Delta Protection Commission policies, the Commission acts as an appellate body for those decisions.

During its 2005-2006 Regular Session, the Legislature passed and the Governor signed AB1200 (Laird), SB1574 (Kuehl), and AB1803 (Committee on Budget). Together, these bills required an assessment of the potential impacts on water supplies of catastrophic failures in the Delta, identification and evaluation of options to protect water supplies and the ecosystem of the Delta, the development of a vision for a sustainable Delta, and

a strategic plan to achieve a sustainable Sacramento-San Joaquin Delta. Additionally, SB 1574 created a Delta Vision Committee to develop the vision and strategic plan.

On September 28, 2006, the Governor issued an Executive Order that, established a Blue Ribbon Task Force and directed it to develop a vision for the Delta.

In October 2008, the Blue Ribbon Task Force published its *Delta Vision Strategic Plan*. According to the plan, in order to achieve a healthy Delta and a more reliable water system for Californians, policy makers must:

- Legally acknowledge the co-equal goals of restoring the Delta ecosystem and creating a more reliable water supply for California.
- 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.
- Restore the Delta ecosystem as the heart of a healthy estuary.
- Promote statewide water conservation, efficiency, and sustainable use.
- Build facilities to improve the existing water conveyance system and expand statewide storage, and operate both to achieve the co-equal goals.
- Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and strategic levee investments.
- Establish a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve these goals.

The report of the Blue Ribbon Task force can be considered a starting point for several bills under consideration by this committee relating to the Delta.

SB 457 would create the Delta Stewardship Council, consisting of eight appointed members and the chair of the Delta Protection Commission. The Council would be required to develop and approve a Delta Stewardship Plan, to hear appeals of decisions made by the Delta Protection Commission, to determine the consistency of major proposed infrastructure projects with the Stewardship Plan, and establish policies and procedures for the operation of water export systems to ensure consistency with the Stewardship Plan.

Because the bill would establish a new entity in state government with responsibilities that are broadly defined, it is difficult to accurately estimate the costs to operate the Council. Staff notes that the San Francisco Bay Conservation and Development Commission has somewhat analogous authority within the San Francisco Bay, and has an ongoing budget of about \$6 million per year. Because the Council under SB 457 would have less direct permitting responsibility, the costs may be less. These costs, plus the additional costs to develop and periodically revise a require plan could be up to \$3 million per year.

The Council would also assume responsibility for any conservation or habitat management plan for the Delta. In addition to the annual staff costs, there would be substantial costs for actually implementing any habitat restoration plan. Staff notes that the CalFed program has spent over \$570 million over the past decade on programs relating to ecosystem restoration in the Delta. While the scope of activities authorized

under this bill is unknown, efforts to protect environmental attributes of the Delta in the past have proved very costly.

The bill would require the Council to create a Delta Science and Engineering Program, as a replacement for the CalFed Science Program. The Science Program would be responsible for researching issues relating to the Delta, synthesizing information for policymakers, reviewing major projects relating to the Delta, and conducting independent reviews of other government agency actions relating to the Delta. Staff notes that over the past several years, the CalFed Science Program has been budgeted between \$10 million and \$35 million per year.

The bill would require the Delta Protection Commission to revise its plans to be consistent with the Stewardship Plan, review all general plans in the Delta to ensure consistency with the Stewardship Plan, review all development proposals in the Delta for consistency with the Stewardship Plan, and develop a regional economic development plan. The cost to carry out these responsibilities would be about \$1.5 million per year.

Because the bill allows the Council to impose requirements on local governments, including general plan requirements, the bill would impose a state mandate.

Staff notes that this bill is one of several bills relating to the Delta that will be before this committee, including, SB 12 (Simitian), SB 229 (Pavley), and SB 458 (Wolk).

**SENATE RULES COMMITTEE**

SB 457

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

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THIRD READING

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Bill No: SB 457

Author: Wolk (D)

Amended: 6/1/09

Vote: 21

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SENATE LOCAL GOVERNMENT COMMITTEE: 3-2, 4/29/09

AYES: Wiggins, Kehoe, Wolk

NOES: Cox, Aanestad

SENATE NATURAL RES. & WATER COMMITTEE: 7-3, 4/14/09

AYES: Pavley, Kehoe, Leno, Padilla, Simitian, Wiggins, Wolk

NOES: Cogdill, Hollingsworth, Huff

NO VOTE RECORDED: Benoit

SENATE APPROPRIATIONS COMMITTEE: 7-5, 5/28/09

AYES: Kehoe, Corbett, DeSaulnier, Hancock, Leno, Oropeza, Yee

NOES: Cox, Denham, Runner, Walters, Wyland

NO VOTE RECORDED: Wolk

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**SUBJECT:** Sacramento-San Joaquin Delta

**SOURCE:** Author

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**DIGEST:** This bill requires the Delta Protection Commission to review all general plans of cities and counties within the Delta, and the resource management plan, to be consistent with any new Delta management plan that may be created or adopted by the commission. This bill authorizes the commission to cover the cost of the review by imposing a per acre-foot fee any water diversion within the Delta Watershed, and a fee on any water conveyed through or around the Delta.

CONTINUED



**ANALYSIS:** In 1995, as required by the Delta Protection Act, the Delta Protection Commission adopted a resource management plan for a statutorily designated primary zone of nearly 490,000 acres within the Sacramento-San Joaquin river delta (SB 1866, [Johnston], Chapter 898, Statutes of 1992).

The Legislature created a cabinet-level Delta Vision Committee to prepare a Delta Vision and Strategic Plan which the Committee produced in January 2009 (SB 1574, [Kuehl], Chapter 535, Statutes of 2006). Governor Schwarzenegger also created a Governor's Delta Vision Blue Ribbon Task Force which released its Delta Vision Strategic Plan in October 2008. The Task Force's report called for a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve its recommended co-equal goals for restoring the Delta ecosystem and creating a more reliable water supply.

This bill requires the Delta Protection Commission (Commission) to review all general plans of cities and counties within the Delta, and the resource management plan, to be consistent with any new Delta management plan that may be created or adopted by the commission; authorize the Commission to cover the cost of the review by imposing a per acre-foot fee on any water diversion within the Delta Watershed, and a fee on any water conveyed through or around the Delta. This bill imposes a state-mandated local program by requiring all general plans of cities and counties within the Delta to be consistent with the Delta Stewardship Plan.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the most recent Senate Appropriations Committee analysis:

Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>Fund</u>
New Council staff	Up to \$3,000 per year			General
Implementation of conservation plans	Potentially in the hundreds of millions			General
New science program	\$10,000 to \$20,000 per year			General

CONTINUED



Delta Protection Commission consistency determinations	\$1,500	\$1,500	General
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Reimbursable state mandates	Unknown		General
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**SUPPORT:** (Verified 6/1/09)

Planning and Conservation League  
County of Solano

**OPPOSITION:** (Verified 6/1/09)

Association of California Water Agencies

CTW:do 6/1/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

**SENATE RULES COMMITTEE**

SB 457

Office of Senate Floor Analyses

1020 N Street, Suite 524

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**THIRD READING**

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Bill No: SB 457

Author: Wolk (D)

Amended: 6/1/09

Vote: 21

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SENATE LOCAL GOVERNMENT COMMITTEE: 3-2, 4/29/09

AYES: Wiggins, Kehoe, Wolk

NOES: Cox, Aanestad

SENATE NATURAL RES. & WATER COMMITTEE: 7-3, 4/14/09

AYES: Pavley, Kehoe, Leno, Padilla, Simitian, Wiggins, Wolk

NOES: Cogdill, Hollingsworth, Huff

NO VOTE RECORDED: Benoit

SENATE APPROPRIATIONS COMMITTEE: 7-5, 5/28/09

AYES: Kehoe, Corbett, DeSaulnier, Hancock, Leno, Oropeza, Yee

NOES: Cox, Denham, Runner, Walters, Wyland

NO VOTE RECORDED: Wolk

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**SUBJECT:** Sacramento-San Joaquin Delta

**SOURCE:** Author

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**DIGEST:** This bill requires the Delta Protection Commission to review all general plans of cities and counties within the Delta, and the resource management plan, to be consistent with any new Delta management plan that may be created or adopted by the commission. This bill authorizes the commission to cover the cost of the review by imposing a per acre-foot fee on any water diversion within the Delta Watershed, and a fee on any water conveyed through or around the Delta.

CONTINUED

**ANALYSIS:** In 1995, as required by the Delta Protection Act, the Delta Protection Commission adopted a resource management plan for a statutorily designated primary zone of nearly 490,000 acres within the Sacramento-San Joaquin river delta (SB 1866, [Johnston], Chapter 898, Statutes of 1992).

The Legislature created a cabinet-level Delta Vision Committee to prepare a Delta Vision and Strategic Plan which the Committee produced in January 2009 (SB 1574, [Kuehl], Chapter 535, Statutes of 2006). Governor Schwarzenegger also created a Governor's Delta Vision Blue Ribbon Task Force which released its Delta Vision Strategic Plan in October 2008. The Task Force's report called for a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve its recommended co-equal goals for restoring the Delta ecosystem and creating a more reliable water supply.

This bill requires the Delta Protection Commission (Commission) to review all general plans of cities and counties within the Delta, and the resource management plan, to be consistent with any new Delta management plan that may be created or adopted by the commission; authorize the Commission to cover the cost of the review by imposing a per acre-foot fee on any water diversion within the Delta Watershed, and a fee on any water conveyed through or around the Delta. This bill imposes a state-mandated local program by requiring all general plans of cities and counties within the Delta to be consistent with the Delta Stewardship Plan.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the most recent Senate Appropriations Committee analysis:

Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>Fund</u>
New Council staff	Up to \$3,000 per year			General
Implementation of conservation plans	Potentially in the hundreds of millions			General
New science program	\$10,000 to \$20,000 per year			General

CONTINUED

Delta Protection Commission consistency determinations	\$1,500	\$1,500	General
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Reimbursable state mandates	Unknown		General
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**SUPPORT:** (Verified 6/1/09)

Planning and Conservation League  
County of Solano

**OPPOSITION:** (Verified 6/1/09)

Association of California Water Agencies

CTW:do 6/4/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

## **SENATE COMMITTEE ON NATURAL RESOURCES AND WATER**

**Senator Fran Pavley, Chair**  
**2009-2010 Regular Session**

**BILL NO:** SB 12

**AUTHOR:** Simitian

**VERSION:** February 26, 2009

**DUAL REFERRAL:** Local Government

**SUBJECT:** Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement act of 2009.

**HEARING DATE:** April 14, 2009

**URGENCY:** No

**CONSULTANT:** Dennis O'Connor

**FISCAL:** Yes

### **BACKGROUND AND EXISTING LAW**

In 1992, the Legislature passed and the Governor signed into law, the Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992. The purpose of the Act was to protect regional, state, and national interests in the long-term agricultural productivity, economic vitality, and ecological health of Delta resources, by coordinating and integrating activities by the various agencies whose land use activities and decisions cumulatively impact the delta. To do so, it created the Delta Protection Commission.

The Commission is a quasi-regulatory body with oversight authority over local land use decisions in the Delta. The Commission consists of 23 members, representing a mix of local elected officials and state agency representatives. The Commission's central task is the preparation and adoption of a comprehensive long-term resource management plan for land uses within the primary zone of the Delta. Once the Commission adopted that plan, each of the local governments within the Delta was required to conform its own general plan to the provisions of the Commission plan with the Commission approving or rejecting the local government conforming plans.

In December 1994, state and federal agencies, urban and agricultural water users, and environmental advocates signed the Bay Delta Accord. Its three main goals were: develop water quality standards to protect the estuary, coordinate operations of the state and federal water projects, and develop a long-term solution for the Delta. The signing of the Accord marked the birth of the CalFed Bay-Delta Program.

To implement the CalFed program, in 2002 the Legislature passed and the Governor signed SB 1653 (Costa). This bill enacted the California Bay-Delta Authority Act, which, among other things, created the California Bay Delta Authority (CBDA). The CBDA is composed of representatives from six state agencies, six federal agencies, seven public members, and one member of the Bay-Delta Public Advisory Committee.

As documented in a 2005 Little Hoover Commission report, the CBDA and CalFed program has not been as successful as originally anticipated. The Commission noted, "Frustration with CalFed is warranted. Because of a faulty design, the CBDA cannot effectively coordinate activities, push agencies to perform, or provide rigorous oversight."

During its 2005-2006 Regular Session, the Legislature passed and the Governor signed AB1200 (Laird), SB 1574 (Kuehl), and AB 1803(Committee on Budget). Together, these bills required an assessment of the potential impacts on water supplies of catastrophic failures in the Delta, identification and evaluation of options to protect water supplies and the ecosystem of the Delta, the development of a vision for a sustainable Delta, and a strategic plan to achieve a sustainable Sacramento-San Joaquin Delta. Additionally, SB 1574 created a Delta Vision Committee to develop the vision and strategic plan. The Committee is composed of the Secretary of the Resources Agency as chair, and the Secretaries of the Business, Transportation and Housing Agency, Department of Food and Agriculture, and the California Environmental Protection Agency, and the President of the Public Utilities Commission.

On September 28, 2006, the Governor issued an Executive Order that, among other things, established a Blue Ribbon Task Force and directed the Task Force to:

- Develop a vision for the sustainable management of the Delta,
- Report to the to the Delta Vision Committee and Governor its findings and recommendations on its vision for the Delta by January 1, 2008, and
- Develop a strategic plan to implement the Delta vision by October 31, 2008.

The Executive Order further directed the Delta Vision Committee to report to the Governor and the Legislature by December 31, 2008 with recommendations for implementing the Delta Vision and Strategic Plan.

October 2008, the Blue Ribbon Task Force published its *Delta Vision Strategic Plan*. According to the plan, in order to achieve a healthy Delta and a more reliable water system for Californians, policy makers must:

- Legally acknowledge the co-equal goals of restoring the Delta ecosystem and creating a more reliable water supply for California.
- 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.
- Restore the Delta ecosystem as the heart of a healthy estuary.
- Promote statewide water conservation, efficiency, and sustainable use.
- Build facilities to improve the existing water conveyance system and expand statewide storage, and operate both to achieve the co-equal goals.
- Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and strategic levee investments.
- Establish a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve these goals.

## **PROPOSED LAW**

This bill would enact the Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement Act of 2009. Specifically, the bill would:

1. Make findings and declarations stating that the coequal goals of restoring the Delta ecosystem and creating a more reliable water supply in California are the foundation of water and ecosystem policymaking. Furthermore:
  - All state agencies with significant responsibilities relating to the Delta should implement their statutory duties in a manner that advances these coequal goals.
  - All water project operational agreements, contracts for water use, water right permits, and financial agreements that impact the Delta should reflect and promote these coequal goals.

## 2. Establish the Delta Ecosystem and Water Council (Council).

- The Council's charge would be to advance the coequal goals of restoring the Delta ecosystem and creating a more reliable water supply in California.
- The Council would have a seven-member board of directors, serving staggered eight year terms.
  - Board members would be selected with diverse expertise and perspectives, and include policy and resource experts, strategic problem solvers, and individuals having success in resolving multi-interest conflicts.
  - Non-voting ex officio members of the board would include the Director of the Department of Water Resources and the Director of Fish and Game.
  - Non-voting ex officio members of the board could include, the Commissioner of the United States Bureau of Reclamation, the Director of the United States Fish and Wildlife Service, the Director of the National Marine Fisheries Service, and the Director of the United States Geological Service, if those federal officials wish to participate.
  - The Governor would appoint the chairperson, who would serve for not more than four years.
  - The chairperson would serve full time. Other members would serve one-third time.
- The Council would be required to prepare and adopt a plan referred to as the California Delta Ecosystem and Water Plan to advance the coequal goals of restoring the Delta ecosystem and creating a more reliable water supply in California.
  - By August 1, 2010, the council would be required to prepare a schedule for preparing and adopting the plan.
  - The Council would be required to establish a goal for the adoption of the plan by December 1, 2010.
  - If the plan is not completed by that date, the Council would be required to adopt an interim strategic plan.
  - The plan would be required to include specified components, including species protection requirements, Delta water flow and water quality requirements, information relating to land use in the Delta, principles and procedures for adaptive management, and a detailed financing plan that identifies costs, benefits, and revenue sources.
  - The council would be required to review and revise the plan every five years.
- The Council would have the exclusive authority to determine the consistency of any project proposed or approved by a state agency or local government with the plan.
- The Council would further be required, among other things, to:
  - Assume responsibility for any conservation or habitat management plan developed for the Delta.
  - Ensure that federal and state actions are consistent with the plan.
  - Participate as a trustee agency pursuant the California Environmental Quality Act (CEQA).
  - Receive and allocate funds to advance policies and programs related to the Delta.
  - Address environmental justice concerns with regard to the implementation of the plan and regarding future Delta decision making.

- Establish policies and procedures that ensure that the day-to-day operations of water export systems are consistent with the plan.
  - The bill would authorize the Council to impose a per-acre-foot fee on water diversions within the Delta watershed and a fee on any water conveyed through or around the Delta.
    - The moneys generated by the imposition of the fee would be required to be deposited in the Delta Ecosystem and Water Fund, which would be established in the State Treasury.
    - The moneys in the fund, upon appropriation by the Legislature to the Council, would be required to be expended by the Council for the exclusive purpose of carrying out the bill's provisions.
3. Establish the California Delta Conservancy to implement the ecosystem restoration elements of the plan.
- The conservancy would consist of 11 voting members:
    - Five members, each of whom shall represent one of the Delta counties who would be selected from nominees advanced by the Delta Protection Commission.
    - Two public members with business or land trust experience.
    - The Secretary for Natural Resources and the Director of Finance.
    - Two additional public members, one appointed by the Senate Committee on Rules and one by the Speaker of the Assembly, would serve as nonvoting ex officio members.
  - The conservancy would, among other things:
    - Coordinate state ecosystem-related and urban waterfront projects in the Delta.
    - Acquire or manage land as needed to implement the plan.
    - Enter into contracts to buy and sell land and other property, and acquire property through the State Public Works Board. The conservancy shall be exempt from approval processes of the Department of General Services.
    - Assume responsibility for publicly or privately owned lands pursuant to voluntary agreements.
4. Establish the Delta Science and Engineering Board to carry out a Delta science and engineering program under the direction of the Council.
- The Council would appoint between 12 and 20 individuals with natural science, social science, engineering, and policy expertise.
    - Members would serve a maximum of two five-year terms.
    - Lead scientists appointed by the council shall have a rotating appointment of three years.
  - The Board would:
    - Research critical scientific issues of both the physical Delta and elsewhere in the state relevant to Delta management.
    - Organize, assess, and synthesize the best available science for policymakers and the council.
    - Review all major projects undertaken to advance the goals of Delta Vision.



- Conduct independent science and engineering reviews of the work of government agencies or consultant work upon the request of the council, the conservancy, or other state agencies.

5. The bill would also revise the Delta Protection Commission as follows:

- Add an additional member to the Commission to include one of the members of the Central Valley Flood Protection Board, or that member's sole designee, raising the total membership to 24.
  - Require the Commission to extend invitations to specified federal agencies to participate in the activities of the Commission in a nonvoting capacity.
  - Require the Commission to revise its resource management plan to be consistent with the plan required to be adopted by the Council.
  - The Commission would be required to review and certify the general plans of those counties and cities for consistency with its resource management plan and the plan adopted by the Council.
6. Require Delta counties, as defined, and the cities within those counties, to revise their general plans and submit the revised plans to the Commission.
7. Make numerous findings and declarations regarding the Delta, its importance to California, the numerous threats to the Delta, the consequences of *Status Quo*, and policies that should be incorporated into state planning, programmatic, and regulatory actions.
8. Impose a state-mandated local program by authorizing the Council to impose requirements on projects undertaken by local governments, and by imposing requirements on Delta counties and cities with regard to the preparation of their general plans.

### **ARGUMENTS IN SUPPORT**

According to the author, “Three years ago, after a series of policy briefings, I reached the conclusion that California’s water delivery system, and the eco-system on which it depends, were both in danger of imminent collapse. The consequences for the environment and the state’s economy if we, the Legislature, failed to act would be catastrophic.”

“I concluded at the time, and significant research since has solidified my view, that any solution that would successfully address the threats to the water supply and the collapsing ecosystem would require reengineering the current system to allow the Delta to function as it had evolved – as a brackish estuary. Not, as it was, and is being operated, as a water delivery system, half fresh and half salt.”

“To do this, would require an isolated conveyance facility – to separate, isolate if you will, the freshwater necessary for California’s cities and farms, from the estuary.”

“We needed legislation to accomplish two missions - fix the environment, and secure the water supply. SB12 is that bill”

**ARGUMENTS IN OPPOSITION:** None Received

## COMMENTS

Based on Blue Ribbon Commission. The author and his staff worked closely with staff from the Delta Vision Blue Ribbon Commission to ensure the current version of this bill matches, as closely as possible, the recommendations in the Commission's *Delta Vision Strategic Plan*. That said, neither the Delta Vision Blue Ribbon Commission, its individual members, nor staff have taken a position on this bill.

Work In Progress. This bill, like most of the other bills addressing the Delta, is still evolving. Consequently, there are some critical blanks and technical issues within the bill. Should this bill move forward, the Committee may wish to ask the author to commit to working with committee staff to resolve those technical issues as the bill progresses.

Also, this bill, like most of the other bills addressing the Delta, contains pages upon pages of Legislative findings and declarations. While findings and intent statements are occasionally helpful in interpreting statutes, one must question whether all such statements in this bill are necessary. Should this bill move forward, the Committee may wish to ask the author to commit to working with committee staff to pare down the findings and intent statements to those truly necessary for accurate interpretation of the statutes.

The Plan is the Key. Everything in this bill tees off from the California Delta Ecosystem and Water Plan – to the extent the plan fails to adequately address one or more critical issue affecting the Delta, the likelihood of successfully achieving the coequal goals of restoring the Delta ecosystem and creating a more reliable water supply is diminished.

Elephants in the Room. The Delta Vision efforts have provided needed clarity to many of the critical problems facing the Delta. This bill, like a number of other bills, builds upon the efforts and recommendations of the Blue Ribbon Task Force. However, like the Task Force, it does not directly confront many of the crucial questions regarding the Delta. These include:

1. *To PC, or not to PC: That is the question.* Most, if not all, Delta water exporters believe that a peripheral canal or some other sort of isolated conveyance is essential to provide an adequate and reliable supply of water from the Delta. Most, if not all, in Delta water users believe a peripheral canal would be the demise of the Delta. The environmental community is of mixed minds on the topic. And, the Blue Ribbon Task Force largely punted, calling for a dual conveyance strategy incorporating both a through-Delta and an isolated conveyance strategy.

Disputes about whether DWR has existing authority to build a PC aside, Delta water policy is not well served by being vague. The author of this bill, as well as the authors of the other Delta bills, should consider either explicitly prohibiting a PC, explicitly authorizing a PC, or explicitly delineating the conditions under which such a decision would be made, by whom, and using what criteria.

2. *Surface Storage.* Like the conveyance debate, many believe that additional surface storage is essential to provide an adequate and reliable supply of water. Others argue that while additional storage might be helpful, the data supporting additional surface storage is not persuasive, especially if public funds are involved. For a variety of reasons, (some good, some not so good), the CalFed program has yet to complete engineering and financial feasibility studies for any of the five surface storage projects identified in the CalFed ROD.

This is another area calling for plain talk. The author of this bill, as well as the authors of the other Delta bills, should consider either explicitly prohibiting new surface storage as a part of this effort, explicitly authorizing new surface storage, or explicitly delineating the conditions under which such a decision would be made, by whom, and using what criteria.

3. *The Big One.* Scientific evidence continues to mount that the Delta in its current form is not sustainable. According to DWR's February 2009 Delta Risk Management Study, under current conditions, there is a greater than 50% chance that within the next 25 years, 30 or more islands will fail because of an earthquake or flood. The study further estimates that repairing those islands would cost \$3.0 – \$4.2 billion, taking 1120 – 1520 days to close all the breaches, and 1,240 – 1,660 days to drain all the islands.

Any plan for the Delta that does not take this potential under explicit consideration is fatally flawed. The author of this bill, as well as the authors of the other Delta bills, should consider, at a minimum, requiring the Delta Plan to explicitly consider the potential for catastrophic levee failure in the Delta and further to develop appropriate response plans.

4. *Delta Protection Commission.* The Commission is a quasi-regulatory body with oversight authority over local land use decisions in the Delta. This bill would significantly change the role of the Commission.

It is not at all clear that a 24 member board is the appropriate structure for this expanded role. The author of this bill, as well as the authors of the other Delta bills, should be encouraged to revisit the structure of the Commission to determine if the proposed 24 member board with its mix of local and state representatives is the most appropriate for its new role.

5. *CalFed.* This bill would leave intact the California Bay Delta Authority Act. That act was enacted to oversee the implementation of the CalFed Bay Delta Program. Among other things, that Act created the California Bay Delta Authority (CBDA). The CBDA has not met in nearly two years because of inability to get a quorum.

It is not at all clear whether this bill is intended to completely replace CalFed, supplement CalFed, or operate independently from CalFed. Clarity would be helpful. Moreover, the author of this bill, as well as the authors of the other Delta bills, should be encouraged to consider eliminating the CBDA.

6. *Fish & Game.* Restoring the ecosystem functions of the Delta will require a well functioning, scientifically directed, independent Department of Fish and Game. There is widespread concern that, for a variety of reasons, the Department does not now meet that description, and may not for the foreseeable future.

Reform of DFG is probably beyond the scope of this bill. That said, to not take steps to restore confidence in DFG is probably a recipe for failure.

7. *Existing Authorities.* In order to achieve a revitalized Delta ecosystem and a reliable water supply for California, while ensuring the Delta remains a unique and valued area, some state and local agencies are going to have to be told “No!” Indeed, one of the principle failures of the California Bay Delta Authority was that it did not have the authority to impose its decisions on others.

For the approach described in this bill to work, some existing authorities of state and local governments (and perhaps the federal government as well) are going to have to be eliminated or otherwise made subservient to implementation of the Delta Plan. Many such agencies are likely to resist. The earlier the author engages local agencies, the Administration, and the federal government in such discussions, the better.

Related Bills: Each of the following bills address one or more aspect of problems the Delta.

*Senate:*

- |                 |  |
|-----------------|--|
| SB 229 (Pavley) | Institutes an interim governance structure for the Delta.  |
| SB 457 (Wolk)   | A compressive bill that builds on many, but not all, of the recommendations of the Blue Ribbon Task Force. |
| SB 458 (Wolk)   | Establishes a Sacramento- San Joaquin Delta Conservancy.   |

*Assembly:*

- |                 |   |
|-----------------|---|
| AB 13 (Salas)   | Establishes a Sacramento-San Joaquin Delta Conservancy. |
| AB 39 (Huffman) | Intended to become a comprehensive bill on the Delta.   |

**SUGGESTED AMENDMENTS:** None

**SUPPORT**

Natural Resources Defense Council (In Concept)

**OPPOSITION**

None Received

<p style="text-align: center;"><b>SENATE LOCAL GOVERNMENT COMMITTEE</b> <b>Senator Patricia Wiggins, Chair</b></p>
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**BILL NO:** SB 12

**AUTHOR:** Simitian

**VERSION:** 2/26/09

**HEARING:** 4/29/09

**FISCAL:** Yes

**CONSULTANT:** Detwiler

***DELTA ECOSYSTEM AND WATER COUNCIL***

**Background and Existing Law**

In 1995, as required by the Delta Protection Act, the Delta Protection Commission adopted a resource management plan for a statutorily designated primary zone of nearly 490,000 acres within the Sacramento-San Joaquin river delta (SB 1866, Johnston, 1992).

Cities and counties in the primary zone have 180 days after the Commission adopts or subsequently amends its resource management plan to submit to the Commission proposed general plan amendments that make their general plans consistent with 11 statutory criteria. The Commission has 60 days to approve the proposed general plan amendments, making 11 documented findings. A city or county then has 120 days to adopt the approved general plan amendments. This general plan consistency requirement applies only to land uses in the Delta's primary zone, and does not apply to land uses in the smaller secondary zone.

The Legislature created a cabinet-level Delta Vision Committee to prepare a Delta Vision and Strategic Plan which the Committee produced in January 2009 (SB 1574, Kuehl, 2006). Governor Schwarzenegger also created a Governor's Delta Vision Blue Ribbon Task Force which released a Delta Vision Strategic Plan in October 2008. The Task Force's report called for a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve its recommended co-equal goals for restoring the Delta ecosystem and creating a more reliable water supply.

**Proposed Law**

Senate Bill 12 enacts the Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement Act of 2009.

SB 12 creates the Delta Ecosystem and Water Council which must adopt a Delta Ecosystem and Water Plan by December 1, 2010. The bill requires the Delta Protection Commission to revise its resource protection plan to be consistent with the Delta Ecosystem and Water Plan.

**I. Land use planning and development.** Senate Bill 12 requires that the general plans of Contra Costa, Sacramento, San Joaquin, Solano, and Yolo counties and the cities within those five counties must be consistent with the Delta Ecosystem and Water Plan.

General plans. SB 12 requires those counties and cities to submit their general plans to the Delta Protection Commission for consistency review. The Commission must review and certify that the counties and cities' general plans are consistent with both the Commission's resource management plan and the Council's Delta Ecosystem and Water Plan. At its discretion, the Council may review those local plans.

Projects in the primary zone. The bill requires the Commission to determine if projects approved by local governments within the primary zone are consistent with both the Commission's resource management plan and the Council's Delta Ecosystem and Water Plan. At its discretion, the Council may exercise consistency determination for individual projects within the primary zone.

Projects in the secondary zone. SB 12 declares that it is the Legislature's intent that the Commission shall exercise appeal authority over selected portions of the secondary zones once local plans are created. At its discretion, the Council may exercise consistency determination for individual projects within the secondary zone.

**II. Delta Protection Commission.** Senate Bill 12 expands the Delta Protection Commission from 23 to 24 members by adding a member of the Central Valley Flood Protection Board.

**III. Delta governance and programs.** Senate Bill 12 contains extensive legislative findings and declarations. SB 12 creates and assigns substantive and fiscal duties to the:

- Delta Ecosystem and Water Council.
- California Delta Conservancy.
- Delta Science and Engineering Board.

### Comments

1. State interest, local decisions. There's no longer any doubt that the Sacramento-San Joaquin River Delta's resources are statewide assets. Both the legislative and executive branches have convinced themselves that stronger institutions and more effective programs are essential to restoring the Delta's ecosystem and creating a more reliable water supply. SB 12 tackles this challenge by creating new public entities plus expanding the membership and duties of the Delta Protection Commission. The bill uses a three-step approach to carry out its goals: *first*, the bill assigns policy guidance to the Delta Ecosystem and Water Council



and its Delta Ecosystem and Water Plan; *second*, the bill relies on the new Council and the existing Commission to supervise the integration of these statewide values into the existing county and city general plans; and *third*, the bill leaves direct land use decisions with the Delta's county boards of supervisors and city councils. SB 12 assigns the right roles to the right levels of government.

2. Plans, projects, or both? Existing law requires city and county general plans to be consistent with the Delta Protection Commission's resource management plan for the primary zone. SB 12 goes further by requiring the Commission to certify local general plans' consistency with the new Delta Plan. But the bill also intrudes into local officials' traditional land use prerogatives by requiring the Commission to determine if every local government project in the primary zone is consistent with both the Commission's resource management plan and the Council's new Delta Plan. SB 12 says that it intends for the Commission to have similar control over projects in the secondary zone. The bill goes on to allow the new Council to second-guess the Commission's review of projects in both the primary and secondary zones. The Committee may wish to consider the point of these overlapping regional reviews. Does every local project warrant this heightened scrutiny by two regional agencies?

3. Project-by-project reviews. Responding to the perception that local officials weren't adequately protecting regional and statewide resources, the Legislature created four regional commissions to plan and then regulate land use: the San Francisco Bay Conservation and Development Commission (BCDC), the Tahoe Regional Planning Agency (TRPA), the California Coastal Commission, and the Delta Protection Commission. These statutes generally require new regional plans, require local plans to be consistent with the regional plans, and sometimes require the regional commissions to review development projects and issue permits. These laws spell out how the property owners apply for development permits, how the public officials give public notice and hold hearings on the permit applications, how the commissions decide on these permit applications, how the opponents can appeal the commissions' decisions, and how any plaintiffs can file legal challenges. In contrast, SB 12 simply requires the Delta Protection Commission to determine whether projects in the primary and secondary zones are consistent with its management plan and the Delta Plan (page 22, lines 26-35), without explaining the procedures that protect due process rights. Further, the bill allows the Council to review these same projects, but without procedural safeguards (page 22, line 36 to page 23, line 2). The Committee may wish to consider amendments that replace these general assignments with specific procedures that promote managerial transparency and administrative accountability. Should the BCDC statute be the bill's model?

4. Details, details, details. The Delta Protection Act spells out the precise protocol for making city and county general plans consistent with the Delta Protection Commission's resource management plan. The statute requires fixed deadlines, clear criteria, and robust documentation. In contrast, SB 12 requires none of

these details. The bill requires plan reviews, but without any timelines; mandates consistency, but without any criteria; and calls for determinations, but without any documented findings. To avoid the kind of statutory ambiguity that invites lawsuits, the Committee may wish to consider amendments that spell out the protocols that local and regional officials must follow. Specifically, the Committee should consider amendments that:

- Set a 180-day deadline for counties and cities to submit proposed general plan amendments to the Commission that would make their plans consistent with the Commission's revised resource protection plan and the new Delta Plan.
- Set a 60-day deadline for the Commission to review and certify that the proposed general plan amendments are consistent with its revised resource protection plan and the new Delta Plan.
- Either adopt criteria for the Commission to use when determining whether the proposed general plan amendments are consistent with its revised resource protection plan and the new Delta Plan, or adopt the generally recognized description of consistency.
- Require the Commission's consistency findings to be based on substantial evidence in the record.
- Set a 120-day deadline for counties and cities to adopt their general plan amendments.

5. Related bills. SB 12 is not the only bill affecting the Delta's resources. On April 29, the Senate Local Government Committee will also consider SB 457 (Wolk). SB 229 (Pavley) and SB 458 (Wolk) are already in the Senate Appropriations Committee. The Assembly is also working on AB 13 (Salas) and AB 39 (Huffman).

6. Double-referred. The Senate Rules Committee ordered the double-referral of SB 12; first to the Senate Natural Resources and Water Committee, then to the Senate Local Government Committee. On April 14, the Senate Natural Resources and Water Committee considered the Delta resource policy questions in SB 12 and then passed the bill on a 7-3 vote. On April 29, the Senate Local Government Committee can consider the bill's effects on local land use planning and decision making.

### **Support and Opposition** (4/23/09)

Support: Unknown.

Opposition: Kern County Water Agency.



**Senate Appropriations Committee Fiscal Summary**  
**Senator Christine Kehoe, Chair**

**SB 12 (Simitian)**

**Hearing Date:** 05/18/2009

**Amended:** 05/05/2009

**Consultant:** Brendan McCarthy

**Policy Vote:** NR&W 7-3, LG 3-2

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**BILL SUMMARY:** SB 12 would establish the Delta Ecosystem and Water Council. The Council would be required to adopt a plan to restore the Delta ecosystem and ensure a reliable water supply, determine whether any project approved by a state agency or local government is consistent with the plan, assume responsibility for any conservation plan for the Delta, and impose a fee on water diversions within the Delta or exported from or around the Delta.

The bill would establish a California Delta Conservancy, with responsibilities related to the Delta ecosystem. The bill would establish a Delta Science and Engineering Board, with specified responsibilities. The bill would also require the Delta Protection Commission to carry out additional land use responsibilities.

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<b>Fiscal Impact (in thousands)</b>				
<b><u>Major Provisions</u></b>	<b><u>2009-10</u></b>	<b><u>2010-11</u></b>	<b><u>2011-12</u></b>	<b><u>Fund</u></b>
New Council staff	Up to \$6,500 per year			General / Special *
New Conservancy staff	Up to \$15,000 per year			General / Special *
Implementation of conservation plans	Potentially in the hundreds of millions			General / Special *
New science program	\$10,000 to \$20,000 per year			General / Special *
Delta Protection Commission consistency determinations		\$1,500	\$1,500	General / Special *
Reimbursable state mandates	Unknown			General / Special *

\* New special fund. Potentially offset by fee revenues.

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**STAFF COMMENTS:** This bill meets the criteria for referral to the Suspense file.

Under current law, the Delta Protection Commission has developed a management plan for land use issues in the Delta. The policies contained in the management plan have

been adopted into the general plans of local governments in the Delta. In the event that a local government makes a land use decision that may conflict with Delta Protection Commission policies, the Commission acts as an appellate body for those decisions.

During its 2005-2006 Regular Session, the Legislature passed and the Governor signed AB1200 (Laird), SB1574 (Kuehl), and AB1803 (Committee on Budget). Together, these bills required an assessment of the potential impacts on water supplies of catastrophic failures in the Delta, identification and evaluation of options to protect water supplies and the ecosystem of the Delta, the development of a vision for a sustainable Delta, and a strategic plan to achieve a sustainable Sacramento-San Joaquin Delta. Additionally, SB 1574 created a Delta Vision Committee to develop the vision and strategic plan.

On September 28, 2006, the Governor issued an Executive Order that, established a Blue Ribbon Task Force and directed it to develop a vision for the Delta.

In October 2008, the Blue Ribbon Task Force published its *Delta Vision Strategic Plan*. According to the plan, in order to achieve a healthy Delta and a more reliable water system for Californians, policy makers must:

- Legally acknowledge the co-equal goals of restoring the Delta ecosystem and creating a more reliable water supply for California.
- 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.
- Restore the Delta ecosystem as the heart of a healthy estuary.
- Promote statewide water conservation, efficiency, and sustainable use.
- Build facilities to improve the existing water conveyance system and expand statewide storage, and operate both to achieve the co-equal goals.
- Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and strategic levee investments.
- Establish a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve these goals.

The report of the Blue Ribbon Task force can be considered a starting point for several bills under consideration by this committee relating to the Delta.

SB 12 establishes the Delta Ecosystem and Water Council, which would be charged with to coequal goals of restoring the Delta ecosystem and creating a more reliable water supply in the state. The Council would have a seven member board of directors, serving eight year terms. The Council would be required to prepare and adopt a California Delta Ecosystem and Water Plan which would address species protection, water flow and water quality requirements, land use issues, and financing information.

The bill would give the Council the exclusive authority to determine whether any project proposed or approved by any state agency or local government is consistent with the Plan. In addition, the Council would assume responsibility for any conservation or habitat management plan developed for the Delta. The Council would also establish policies and procedures to ensure that the operations of the water export system are consistent with the Plan.

Because the bill would establish a new entity in state government with responsibilities that are broadly defined, it is difficult to accurately estimate the costs to operate the Council. Staff notes that the San Francisco Bay Conservation and Development Commission has somewhat analogous authority within the San Francisco Bay, and has an ongoing budget of about \$6 million per year. This cost, plus the additional costs to develop and periodically revise a require plan, and the costs for Council member salaries would amount to about \$6.5 million per year.

The bill authorizes the Council to impose fees on water diversions within the Delta watershed and on any water conveyed through or around the Delta. The revenues, upon appropriation by the Legislature, would be available for the bill's provisions.

The bill would establish the California Delta Conservancy to implement the ecosystem restoration elements of the Plan. The Conservancy would coordinate state ecosystem-related projects in the Delta and acquire or manage lands as needed.

As mentioned above, the costs for operating a new Conservancy are unknown. Staff notes that the Coastal Commission, which has a similar mission, has an annual operating budget of about \$11 million. Given that regulatory issues in the Delta are as complicated, if not more complicated, than on the coast, operating costs for the proposed Delta Conservancy could be up to \$15 million per year. In addition to the annual staff costs, there would be substantial costs for actually implementing any habitat restoration plan. The CalFed program has spent over \$570 million over the past decade on programs relating to ecosystem restoration in the Delta. While the scope of activities authorized under this bill is unknown, efforts to protect environmental attributes of the Delta in the past have proved very costly.

The bill would establish the Delta Science and Engineering Board to research scientific issues related to the Delta, synthesize the best available scientific information for policymakers, review all major projects undertaken to advance the goals of the Delta Vision, and conduct independent scientific reviews of the work of government agencies, upon request. The Board would function as a replacement and successor to the existing CalFed Science Program. Over the past several years, the CalFed Science Program has been budgeted between \$10 million and \$35 million per year.

The bill would require cities and counties in the Delta to revise their general plans to make them consistent with the California Delta Ecosystem and Water Plan.

The bill would also revise the composition and responsibilities of the Delta Protection Commission. It would require the Commission to revise its management plan so that it is consistent with the Council's California Delta Ecosystem and Water Plan. The Commission would also be responsible for determining that the general plans of cities and counties in the Delta are consistent with the California Delta Ecosystem and Water Plan. The Commission would be given the additional responsibility to review any project proposed or approved by a state or local agency in the Delta, to ensure that the project is consistent with the California Delta Ecosystem and Water Plan. The cost to carry out these responsibilities would be about \$1.5 million per year.

Because the bill allows the Council to impose requirements on local governments, including general plan requirements, the bill would impose a state mandate.

Staff notes that this bill is one of several bills relating to the Delta that will be before this committee, including, SB 229 (Pavley), SB 457 (Wolk), and SB 458 (Wolk).

**Senate Appropriations Committee Fiscal Summary**  
**Senator Christine Kehoe, Chair**

**SB 12 (Simitian)**

**Hearing Date:** 05/28/2009

**Amended:** 05/05/2009

**Consultant:** Brendan McCarthy

**Policy Vote:** NR&W 7-3, LG 3-2

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**BILL SUMMARY:** SB 12 would establish the Delta Ecosystem and Water Council. The Council would be required to adopt a plan to restore the Delta ecosystem and ensure a reliable water supply, determine whether any project approved by a state agency or local government is consistent with the plan, assume responsibility for any conservation plan for the Delta, and impose a fee on water diversions within the Delta or exported from or around the Delta.

The bill would establish a California Delta Conservancy, with responsibilities related to the Delta ecosystem. The bill would establish a Delta Science and Engineering Board, with specified responsibilities. The bill would also require the Delta Protection Commission to carry out additional land use responsibilities.

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<b>Fiscal Impact (in thousands)</b>				
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Reimbursable state mandates	Unknown			General / Special *

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**STAFF COMMENTS: Suspense file.**

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been adopted into the general plans of local governments in the Delta. In the event that a local government makes a land use decision that may conflict with Delta Protection Commission policies, the Commission acts as an appellate body for those decisions.

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- Legally acknowledge the co-equal goals of restoring the Delta ecosystem and creating a more reliable water supply for California.
- 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.
- Restore the Delta ecosystem as the heart of a healthy estuary.
- Promote statewide water conservation, efficiency, and sustainable use.
- Build facilities to improve the existing water conveyance system and expand statewide storage, and operate both to achieve the co-equal goals.
- Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and strategic levee investments.
- Establish a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve these goals.

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SB 12 establishes the Delta Ecosystem and Water Council, which would be charged with to coequal goals of restoring the Delta ecosystem and creating a more reliable water supply in the state. The Council would have a seven member board of directors, serving eight year terms. The Council would be required to prepare and adopt a California Delta Ecosystem and Water Plan which would address species protection, water flow and water quality requirements, land use issues, and financing information.

The bill would give the Council the exclusive authority to determine whether any project proposed or approved by any state agency or local government is consistent with the Plan. In addition, the Council would assume responsibility for any conservation or habitat management plan developed for the Delta. The Council would also establish policies and procedures to ensure that the operations of the water export system are consistent with the Plan.

Because the bill would establish a new entity in state government with responsibilities that are broadly defined, it is difficult to accurately estimate the costs to operate the Council. Staff notes that the San Francisco Bay Conservation and Development Commission has somewhat analogous authority within the San Francisco Bay, and has an ongoing budget of about \$6 million per year. This cost, plus the additional costs to develop and periodically revise a require plan, and the costs for Council member salaries would amount to about \$6.5 million per year.

The bill authorizes the Council to impose fees on water diversions within the Delta watershed and on any water conveyed through or around the Delta. The revenues, upon appropriation by the Legislature, would be available for the bill's provisions.

The bill would establish the California Delta Conservancy to implement the ecosystem restoration elements of the Plan. The Conservancy would coordinate state ecosystem-related projects in the Delta and acquire or manage lands as needed.

As mentioned above, the costs for operating a new Conservancy are unknown. Staff notes that the Coastal Commission, which has a similar mission, has an annual operating budget of about \$11 million. Given that regulatory issues in the Delta are as complicated, if not more complicated, than on the coast, operating costs for the proposed Delta Conservancy could be up to \$15 million per year. In addition to the annual staff costs, there would be substantial costs for actually implementing any habitat restoration plan. The CalFed program has spent over \$570 million over the past decade on programs relating to ecosystem restoration in the Delta. While the scope of activities authorized under this bill is unknown, efforts to protect environmental attributes of the Delta in the past have proved very costly.

The bill would establish the Delta Science and Engineering Board to research scientific issues related to the Delta, synthesize the best available scientific information for policymakers, review all major projects undertaken to advance the goals of the Delta Vision, and conduct independent scientific reviews of the work of government agencies, upon request. The Board would function as a replacement and successor to the existing CalFed Science Program. Over the past several years, the CalFed Science Program has been budgeted between \$10 million and \$35 million per year.

The bill would require cities and counties in the Delta to revise their general plans to make them consistent with the California Delta Ecosystem and Water Plan.

The bill would also revise the composition and responsibilities of the Delta Protection Commission. It would require the Commission to revise its management plan so that it is consistent with the Council's California Delta Ecosystem and Water Plan. The Commission would also be responsible for determining that the general plans of cities and counties in the Delta are consistent with the California Delta Ecosystem and Water Plan. The Commission would be given the additional responsibility to review any project proposed or approved by a state or local agency in the Delta, to ensure that the project is consistent with the California Delta Ecosystem and Water Plan. The cost to carry out these responsibilities would be about \$1.5 million per year.



Because the bill allows the Council to impose requirements on local governments, including general plan requirements, the bill would impose a state mandate.

Staff notes that this bill is one of several bills relating to the Delta that will be before this committee, including, SB 229 (Pavley), SB 457 (Wolk), and SB 458 (Wolk).



**SENATE RULES COMMITTEE****SB 12**

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**THIRD READING**

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Bill No: SB 12  
Author: Simitian (D)  
Amended: 6/2/09  
Vote: 21

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**SENATE NATURAL RES. & WATER COMMITTEE:** 7-3, 4/14/09

AYES: Pavley, Kehoe, Leno, Padilla, Simitian, Wiggins, Wolk

NOES: Cogdill, Hollingsworth, Huff

NO VOTE RECORDED: Benoit

**SENATE LOCAL GOVERNMENT COMMITTEE:** 3-2, 4/29/09

AYES: Wiggins, Kehoe, Wolk

NOES: Cox, Aanestad

**SENATE APPROPRIATIONS COMMITTEE:** 7-5, 5/28/09

AYES: Kehoe, Corbett, DeSaulnier, Hancock, Leno, Oropeza, Yee

NOES: Cox, Denham, Runner, Walters, Wyland

NO VOTE RECORDED: Wolk

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**SUBJECT:** Sacramento-San Joaquin River Delta, Clean Drinking Water,  
Water Supply Security, and Environmental Improvement Act  
of 2009

**SOURCE:** Author

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**DIGEST:** This bill establishes the Delta Ecosystem and Water Council to advance the coequal goals of restoring the Delta ecosystem and creating a more reliable water supply in California. The board of directors of the council will consist of seven unspecified members.

CONTINUED

**ANALYSIS:** In 1995, as required by the Delta Protection Act, the Delta Protection Commission (Commission) adopted a resource management plan for a statutorily designated primary zone of nearly 490,000 acres within the Sacramento-San Joaquin river delta.

Cities and counties in the primary zone have 180 days after the Commission adopts or subsequently amends its resource management plan to submit to the Commission proposed general plan amendments that make their general plans consistent with 11 statutory criteria. The Commission has 60 days to approve the proposed general plan amendments, making 11 documented findings. A city or county then has 120 days to adopt the approved general plan amendments. This general plan consistency requirement applies only to land uses in the Delta's primary zone, and does not apply to land uses in the smaller secondary zone.

The Legislature created a cabinet-level Delta Vision Committee to prepare a Delta Vision and Strategic Plan which the Committee produced in January 2009. Governor Schwarzenegger also created a Governor's Delta Vision Blue Ribbon Task Force which released a Delta Vision Strategic Plan in October 2008. The Task Force's report called for a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve its recommended co-equal goals for restoring the Delta ecosystem and creating a more reliable water supply.

This bill makes legislative findings and declares all of the following:

1. The coequal goals of restoring the Delta ecosystem and creating a more reliable water supply in California are the foundation of water and ecosystem policymaking.
2. All state agencies with significant responsibilities relating to the Delta should implement their statutory duties in a manner that advances these coequal goals.
3. All water project operational agreements, contracts for water use, water right permits, and financial agreements that impact the Delta should reflect and promote these coequal goals.

The bill establishes the Delta Ecosystem and Water Council to advance the coequal goals of restoring the Delta ecosystem and creating a more reliable water supply in California.

CONTINUED

The board of directors of the council will consist of seven unspecified members.

The bill requires the council to prepare and adopt a plan referred to as the California Delta Ecosystem and Water Plan that incorporates the plans of other agencies, as appropriate.

The council will have exclusive authority to determine the consistency of any project proposed or approved by a state agency or local government with the plan adopted pursuant to this division.

The council will prepare on or before August 1, 2010, a schedule for preparing and adopting the plan.

The council will establish a goal for the adoption of the plan by December 1, 2010.

If the plan is not adopted by December 1, 2010, the council will adopt an interim strategic plan.

The plan will be prepared in order to achieve the coequal goals of the Delta Vision. The plan shall build upon other plans, modifying and extending those plans as needed to meet the requirements of this division. Those other plans include, but are not limited to, the ecosystem restoration program being developed by the Department of Fish and Game, the land use and resource management plan developed by the Delta Protection Commission, any local habitat conservation plan within the Delta, the Suisun Marsh plan under development, the provisions of the California Water Plan that address reliable water supply being developed by the department, and the conservation program resulting from the Bay Delta Conservation Plan.

Those persons responsible for implementing the plans will do so in a manner that is consistent with the plan adopted pursuant to this division.

The council may impose a per-acre-foot fee on water diversions within the Delta watershed, and a fee on any water conveyed through or around the Delta. The revenues generated from fees imposed pursuant to this section, or from similar fee revenues collected by another state agency, shall be available, upon appropriation, to fund the activities authorized in this division.

CONTINUED

The bill makes further legislative findings and declares all of the following:

1. California should maintain a strong and consistent investment in science and engineering important to the Delta. There needs to be a more direct link between scientific investigation and real-world management and policy.
2. To achieve this, the council requires both a permanent science and engineering program staff and an independent science and engineering board that reviews actions undertaken by the council.
3. The science and engineering program and the independent science and engineering board should receive stable, adequate funding.
4. The science and engineering program should be a replacement for, and a successor to, the successful CALFED Independent Science Program, and a newly constituted independent science and engineering board should replace the CALFED Independent Science Board.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the latest Senate Appropriations Committee analysis:

<u>Major Provisions</u>	<u>Fiscal Impact (in thousands)</u>			<u>Fund</u>
	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	
New Council staff	Up to \$6,500 per year			General/ Special*
New Conservancy staff	Up to \$15,000 per year			General/ Special*
Implementation of conservation plans	Potentially in the hundreds of millions			General/ Special*
New science program	\$10,000 to \$20,000 per year			General/ Special*

CONTINUED

Delta Protection Commission consistency determinations	\$1,500	\$1,500	General/ Special*
Reimbursable state mandates	Unknown		General/ Special *

\* New special fund. Potentially offset by fee revenues.

CTW:mw:n 5/22/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*

PROPOSED CONFERENCE REPORT NO. 1 - September 9, 2009

SB 12 (Simitian)

As Amended July 9, 2009

Majority vote

SENATE:	26-9	(June 3, 2009)	ASSEMBLY:	(July 13, 2009)
				(vote not relevant)

<u>SENATE CONFERENCE VOTE:</u>	4-0	<u>ASSEMBLY CONFERENCE VOTE:</u>	4-0
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Ayes:	Steinberg, Pavley, Padilla, Florez	Ayes:	Bass, Huffman, Caballero, Solorio
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Original Committee Reference: W., P. & W.

SUMMARY: Establishes new legal framework and Delta Stewardship Council (Council) for managing environmental and water resources of the Sacramento-San Joaquin Delta (Delta). Specifically, the conference committee amendments:

- 1) Repeal the California Bay-Delta Authority Act.
- 2) Establish new legal framework for Delta management which:
  - a) Sets the coequal goals of "providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem" as the foundation for State decisions as to Delta management.
  - b) Sets certain objectives as inherent in the coequal goals.
  - c) Sets state policy of reducing reliance on the Delta to meet future water supply needs through a statewide strategy of investing in improved regional supplies and conservation.
  - d) Requires Council land-use decisions to be guided by certain findings, policies, and goals.
  - e) States certain "fundamental goals for managing land use in the Delta."
  - f) Describes the longstanding constitutional principle of reasonable use and the public trust doctrine as the foundation of state water management policy.
  - g) Preserves specified statutes and legal doctrines as unaffected by the new division in the Water Code, including area-of-origin protections, water rights and public trust doctrine.
  - h) Establishes the Council as the successor to the California Bay-Delta Authority, and provides for the Council to assume its responsibilities.
  - i) Defines certain terms, including the following key terms:
    - i) "Coequal goals" means "the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem," but those goals are achieved in a manner to protect the Delta as an evolving place.

- ii) "Covered action" means a Delta related plan or program that meet certain conditions, including significant impact on achievement of the coequal goals.
  - iii) "Restoration" means achieving a close approximation of the Delta's ecosystem's natural potential, given past physical changes and future impact of climate change.
- 3) Require the Council to take certain "early actions," including:
- a) Appointment of Delta Independent Science Board
  - b) Development of strategy to engage federal government in the Delta
  - c) Certain projects to start now, before the Delta Plan is completed, including the "Two-Barrier" pilot project and specified ecosystem restoration projects
- 4) Require the State Water Resources Control Board (SWRCB) to develop new flow criteria for the Delta ecosystem necessary to protect public trust resources.
- a) Specify process and substance of development of flow criteria.
  - b) Require SWRCB approval of change in State Water Project (SWP) and Central Valley Project (CVP) point of diversion, as specified, to include flow criteria.
  - c) Require SWRCB to enter agreement with SWP/CVP contractors to pay costs.
  - d) Preserve SWRCB authority to review water rights and impose terms and conditions on water right permits.
- 5) Require SWRCB to submit prioritized schedule and costs for instream flow studies for the Delta and other high priority streams, with completion by certain dates.
- 6) Create Delta Stewardship Council as an independent state agency.
- a) Establish 7-member Council, with four appointments by the Governor, two by the Legislature, and the chair of the Delta Protection Commission, with staggered terms.
  - b) Provide for Council salaries, hiring of Council staff and headquarters.
  - c) Specify authority of Council, including:
    - i) Administrative authorities (*e.g.*, contracting).
    - ii) Consultation with other agencies implementing Delta Plan.
    - iii) Performance measurements.
    - iv) Appeals of state/local agency determinations of consistency with Delta Plan, including specified procedures for such appeals.

- 7) Create Delta Watermaster as enforcement officer for SWRCB in the Delta.
- 8) Create Delta Independent Science Board (Science Board) and Delta Science Program.
- 9) Requires Council to consider including the Bay Delta Conservation Plan (BDCP) under certain circumstances, including:
  - a) Conditions BDCP incorporation into Delta Plan and state funding for BDCP public benefits on compliance with the Natural Community Conservation Planning (NCCP) Act and California Environmental Quality Act (CEQA).
  - b) Requires certain analyses as part of CEQA compliance:
    - i) reasonable range of flow criteria, rates of diversion and other operational criteria required to satisfy NCCP Act.
    - ii) reasonable range of Delta conveyance alternatives, and capacity/design options for a lined canal, an unlined canal, and pipelines.
    - iii) potential effects of climate change on conveyance and habitat restoration activities.
    - iv) potential effects on migratory fish and aquatic resources.
    - v) potential effects on Sacramento River/San Joaquin River flood management.
    - vi) resilience/recovery of conveyance alternatives in event of natural disaster.
    - vii) potential effects of each conveyance alternative on Delta water quality.
  - c) Requires Department of Water Resources (DWR) to consult with Council and Science Board during development of BDCP.
  - d) Requires Council to have at least one public hearing and incorporate BDCP into Delta Plan if Department of Fish & Game approves BDCP as NCCP.
  - e) Requires annual report to Council on BDCP implementation.
  - f) Allows Council to make recommendations to BDCP implementing agencies.
  - g) Requires BDCP to include a transparent, real-time operational decisionmaking process in which fishery agencies ensure applicable biological performance measures are achieved in a timely manner.
  - h) Specifies that BDCP chapter does not amend or create any additional legal obligation or cause of action under NCCP Act or CEQA.
- 10) Conforms certain laws to provide for creation of the Council.



11) Makes legislative findings regarding the Delta and California water.

12) Conditions enactment on enactment of SB 229, SB 458, AB 39 and AB 49.

EXISTING LAW establishes the California Bay-Delta Authority to oversee implementation of the CALFED Bay-Delta Program, and authorizes more than 200 state and local agencies to govern the Delta.

AS PASSED BY THE SENATE, the bill created a Delta Council but provided little detail.

The Assembly amendments removed all the substance and stated legislative intent to create a Delta council.

FISCAL EFFECT: Unknown

COMMENTS: For several years, the Delta has suffered a crisis – ecosystem, water supply, levee stability, water quality, policy, program, and litigation. In June 2004, a privately owned levee failed and the State spent nearly \$100 million to fix it and save an island whose property value was far less. In August 2005, the Department of Fish & Game (DFG) reported a trend showing severe decline in the Delta fishery. In 2006, the Legislature reorganized Delta programs and funding under the Resources Agency Secretary. In 2007, a federal judge, acting under the federal Endangered Species Act, declared illegal certain federal biological opinions about near-extinct fish and restricted water exports from the Delta, to the San Francisco Bay Area, the San Joaquin Valley and Southern California. The Governor shortly thereafter called the Legislature into an extraordinary session on water.

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) of 2006 required a cabinet committee to present recommendations for a Delta 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 the recommendations to the Legislature on January 3, 2009. This year, the Legislature held numerous hearings on Delta Vision and a set of five bills, including this one. In August, policy committees in both houses held hearings on the topics in these bills, and considered "pre-print" versions. Conference Committee substantially amended the pre-prints.

Legal Framework for Delta: Since statehood, California has asked much of the Delta, perhaps too much. Conflicting demands have led to crisis and conflict – between and among agencies, stakeholders and natural resources. The Delta Vision process spent more than 18 months, investigating the Delta, engaging agencies and stakeholders, and thinking carefully about the Delta's challenges and prospects for change. The Task Force's first recommendation was to change the fundamental legal framework for the State to make decisions as to its activities in the Delta – encapsulated in two "coequal goals" of "restoring the Delta ecosystem and creating a more reliable water supply for California." This bill sets a new legal and governance framework for the future of the Delta, explicitly stating for the first time how the state should approach resolving the inherent conflicts in managing Delta resources. This framework includes legislative findings, policies and definitions, which provides the foundation for new governance in the Delta.

Early Actions: This bill identifies a series of actions that existing and new agencies need to take as soon as possible – before the Council completes its new Delta Plan. Some actions are administrative. Others are substantive projects for the Delta ecosystem and/or water supply reliability. The early actions part communicates the urgency of responding to the Delta crisis, without waiting for the completion of another Delta plan.

Council Membership: The foundation of this bill's change is the new Delta Stewardship Council, which this bill creates with seven members. Council members would be required to possess diverse expertise and reflect a statewide perspective. However, this bill would also designate the chair of the Delta Protection Commission as a voting member of the Council *ex officio*.

Delta Vision suggested the Council should have no slots set aside for persons with specific characteristics. Others suggest that there must be specific slots for persons with specific characteristics, such as, representing Delta interests, environmental interests, exporter interest, etc. This bill appears to be a hybrid of the two approaches, with membership appointed by the Governor, Senate Rules Committee, Assembly Speaker and the DPC

Delta Vision suggested the Council should all be appointed by the Governor, subject to Senate confirmation, with no *ex officio* members. That approach would rely solely on the Senate confirmation process to ensure the Governor's appointments fairly balanced state and local interests. This bill provides the Senate and Assembly an additional method to ensure balance, at least from the Senate and Assembly's perspectives, by allowing each to appoint a member.

Delta Water Master: This bill includes a provision that requires SWRCB to appoint a Delta Watermaster. This version, however, is much narrower than the proposal in the August pre-print version, which had broader authority. The Watermaster in this bill acts by delegation of authority from the SWRCB. It is the enforcement officer for the board, with specified delegated authorities. This version also narrows its geographic jurisdiction to the Delta.

Science Board/Program: This bill establishes a Science Board as well as a science program under the leadership of a Lead Scientist. This language was developed in cooperation with Professor Jeff Mount, former chair of the CALFED Independent Science Board.

Bay Delta Conservation Plan: This bill conditions State funding and incorporation of BDCP into the larger Delta Plan on its approval as a Natural Community Conservation Plan by DFG and completion of robust investigation and analysis pursuant to CEQA. While some agencies have asserted that BDCP would be an NCCP, the December 2006 planning agreement specifically provided that the signatories were not committed to achieving the higher standard for an NCCP under state Endangered Species Act. This bill sets the higher NCCP standard ("the gold standard") as the threshold for state funding of the public benefits of BDCP activities, which is a significant step forward, while relying on existing law. The specified issues that will be analyzed under CEQA also add credibility to the outcome of BDCP, but also rely on the context of existing CEQA law.

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

**SENATE RULES COMMITTEE**

SB 12

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**UNFINISHED BUSINESS**

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Bill No:      SB 12  
Author:      Simitian (D)  
Amended:    7/9/09  
Vote:        21

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SENATE NATURAL RES. & WATER COMMITTEE: 7-3, 4/14/09

AYES: Pavley, Kehoe, Leno, Padilla, Simitian, Wiggins, Wolk

NOES: Cogdill, Hollingsworth, Huff

NO VOTE RECORDED: Benoit

SENATE LOCAL GOVERNMENT COMMITTEE: 3-2, 4/29/09

AYES: Wiggins, Kehoe, Wolk

NOES: Cox, Aanestad

SENATE APPROPRIATIONS COMMITTEE: 7-5, 5/28/09

AYES: Kehoe, Corbett, DeSaulnier, Hancock, Leno, Oropeza, Yee

NOES: Cox, Denham, Runner, Walters, Wyland

NO VOTE RECORDED: Wolk

SENATE FLOOR: 26-9, 6/3/09

AYES: Alquist, Ashburn, Calderon, Cedillo, Corbett, Ducheny, Florez,  
Hancock, Harman, Kehoe, Leno, Liu, Lowenthal, Maldonado, Negrete  
McLeod, Oropeza, Padilla, Pavley, Romero, Simitian, Steinberg,  
Wiggins, Wolk, Wright, Wyland, Yee

NOES: Aanestad, Benoit, Cogdill, Cox, Denham, Huff, Runner, Strickland,  
Walters

NO VOTE RECORDED: Correa, DeSaulnier, Dutton, Hollingsworth,  
Vacancy

ASSEMBLY FLOOR: 47-20, 7/13/09 - See last page for vote

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**SUBJECT:**      Sacramento-San Joaquin Delta Stewardship Council

CONTINUED

**SOURCE:** Author

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**DIGEST:** This bill declares legislative intent to enact legislation to establish the Sacramento-San Joaquin Delta Stewardship Council.

Assembly Amendments reduced the language to single lines of intent.

**ANALYSIS:**

Existing law:

1. Requires various state agencies to administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta. The Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992 creates the Delta Protection Commission and requires the Commission to prepare and adopt a comprehensive long-term resource management plan for specified lands within the Sacramento-San Joaquin Delta.
2. Requires the Secretary of the Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill declares legislative intent to enact legislation to establish the Sacramento-San Joaquin Delta Stewardship Council.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**ASSEMBLY FLOOR:**

AYES: Ammiano, Arambula, Beall, Blumenfield, Brownley, Caballero, Charles Calderon, Carter, Chesbro, Coto, Davis, De La Torre, De Leon, Eng, Evans, Feuer, Fong, Fuentes, Furutani, Galgiani, Hall, Hayashi, Hernandez, Hill, Huffman, Jones, Krekorian, Lieu, Logue, Bonnie Lowenthal, Ma, Mendoza, Monning, Nava, John A. Perez, V. Manuel Perez, Portantino, Ruskin, Salas, Saldana, Skinner, Solorio, Swanson, Torlakson, Torres, Torrico, Bass

CONTINUED

NOES: Adams, Blakeslee, Conway, Cook, DeVore, Emmerson, Fuller,  
Gaines, Garrick, Gilmore, Hagman, Harkey, Huber, Jeffries, Knight,  
Miller, Nestande, Nielsen, Silva, Tran

NO VOTE RECORDED: Anderson, Bill Berryhill, Tom Berryhill, Block,  
Buchanan, Duvall, Fletcher, Niello, Smyth, Audra Strickland, Villines,  
Yamada, Vacancy

CTW:mw 7/14/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*

**SENATE RULES COMMITTEE****SB 12**

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**CONFERENCE COMPLETED**

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Bill No: SB 12

Author: Simitian (D)

Amended: Conference Report No. 1 - 9/9/09

Vote: 21

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**CONFERENCE COMMITTEE VOTE:** 8-0, 9/9/09AYES: Senators Steinberg, Pavley, Padilla, and Florez, Assembly Members Bass, Huffman, Caballero, and Solorio

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**SUBJECT:** Sacramento-San Joaquin Delta Council**SOURCE:** Author

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**DIGEST:** Conference Committee Amendments delete the prior version of the bill which declares legislative intent to enact legislation to establish the Sacramento-San Joaquin Delta Stewardship Council. This bill now provides for a comprehensive plan for taking care of the Sacramento-San Joaquin Delta including the establishment of a Delta Stewardship Council and the Delta Independent Science Board. It expands the State Water Resources Control Board's collection and reporting of data concerning the delta and establishment of a Delta Watermaster. It also repeals the California Bay-Delta Authority. Lastly, the bill becomes operative if the other bills of the comprehensive water planning package are enacted – SB 229 (Pavley), SB 458 (Steinberg and Simitian), AB 39 (Huffman), and AB 49 (Feuer and Huffman).

**ANALYSIS:** Existing law generally provides that the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, may not be required to pay any fee for the performance of an official service. Existing law exempts from this provision any fee or charge for official services

CONTINUED

required pursuant to specified provisions of law relating to water use or water quality.

This bill expands the exemption to other provisions relating to water use, including provisions that require the payment of fees to the State Water Resources Control Board (SWRCB) for official services relating to statements of water diversion and use.

Existing law requires the Secretary of the Natural Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill establishes the Delta Stewardship Council as an independent agency of the state. The council would be required to consist of seven members appointed in a specified manner. This bill specifies the powers of the council. The council will be required to establish a consultation process for the purposes of the act. This bill requires a state or local public agency that proposes to undertake certain proposed actions that will occur within the boundaries of the Delta or the Suisun Marsh to prepare, and submit to the council, a specified written certification of consistency with the Delta Plan, created pursuant to AB 39 (Huffman), 2009-10 Regular Session, prior to taking those actions. By imposing these requirements on a local public agency, this bill imposes a state-mandated local program. This bill establishes an appeal process by which a person may claim that a proposed action is inconsistent with the Delta Plan, as prescribed.

This bill imposes requirements on the Department of Water Resources in connection with the preparation of a specified Bay Delta Conservation Plan (BDCP). The BDCP would only be permitted to be incorporated in the Delta Plan if certain requirements are met.

This bill establishes the Delta Independent Science Board, whose members would be selected by the council. This bill requires the Delta Independent Science Board to develop a scientific program relating to the management of the Delta.

This bill requires the SWRCB to establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010. This bill requires the SWRCB to develop new instream flow criteria



for the Delta ecosystem, as specified. The SWRCB will be required to submit those determinations to the council. This bill requires the SWRCB, in consultation with the council, to appoint a special master for the Delta, referred to as the Delta Watermaster. This bill grants specified authority to the Delta Watermaster.

The California Bay-Delta Authority Act establishes the California Bay-Delta Authority in the Resources Agency. The Act requires the authority and the implementing agencies to carry out 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 Programmatic Record of Decision, dated August 28, 2000, or as it may be amended.

This bill repeals that Act. This bill imposes requirements on the council in connection with the repeal of that Act.

These provisions would only become operative if SB 229, SB 458, AB 39, and AB 49 of the 2009-10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

DLW:mw 9/10/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*



**SENATE RULES COMMITTEE****SB 12**

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**CONFERENCE COMPLETED**

---

Bill No: SB 12

Author: Simitian (D)

Amended: Conference Report No. 1 - 9/9/09

Vote: 21

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**CONFERENCE COMMITTEE VOTE:** 8-0, 9/9/09AYES: Senators Steinberg, Pavley, Padilla, and Florez, Assembly Members  
Bass, Huffman, Caballero, and SolorioNO VOTE RECORDED: Aanestad, Cogdill, Fuller, Huff, Jeffries, Nielsen

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**SUBJECT:** Sacramento-San Joaquin Delta Council**SOURCE:** Author

---

**DIGEST:** Conference Committee Amendments delete the prior version of the bill which declares legislative intent to enact legislation to establish the Sacramento-San Joaquin Delta Stewardship Council. This bill now provides for a comprehensive plan for taking care of the Sacramento-San Joaquin Delta including the establishment of a Delta Stewardship Council and the Delta Independent Science Board. It expands the State Water Resources Control Board's collection and reporting of data concerning the delta and establishment of a Delta Watermaster. It also repeals the California Bay-Delta Authority. Lastly, the bill becomes operative if the other bills of the comprehensive water planning package are enacted – SB 229 (Pavley), SB 458 (Steinberg and Simitian), AB 39 (Huffman), and AB 49 (Feuer and Huffman).

**ANALYSIS:** Existing law generally provides that the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, may not be required to pay any fee for the performance of an official service. Existing

CONTINUED

law exempts from this provision any fee or charge for official services required pursuant to specified provisions of law relating to water use or water quality.

This bill expands the exemption to other provisions relating to water use, including provisions that require the payment of fees to the State Water Resources Control Board (SWRCB) for official services relating to statements of water diversion and use.

Existing law requires the Secretary of the Natural Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill establishes the Delta Stewardship Council as an independent agency of the state. The council would be required to consist of seven members appointed in a specified manner. This bill specifies the powers of the council. The council will be required to establish a consultation process for the purposes of the act. This bill requires a state or local public agency that proposes to undertake certain proposed actions that will occur within the boundaries of the Delta or the Suisun Marsh to prepare, and submit to the council, a specified written certification of consistency with the Delta Plan, created pursuant to AB 39 (Huffman), 2009-10 Regular Session, prior to taking those actions. By imposing these requirements on a local public agency, this bill imposes a state-mandated local program. This bill establishes an appeal process by which a person may claim that a proposed action is inconsistent with the Delta Plan, as prescribed.

This bill imposes requirements on the Department of Water Resources in connection with the preparation of a specified Bay Delta Conservation Plan (BDCP). The BDCP would only be permitted to be incorporated in the Delta Plan if certain requirements are met.

This bill establishes the Delta Independent Science Board, whose members would be selected by the council. This bill requires the Delta Independent Science Board to develop a scientific program relating to the management of the Delta.

This bill requires the SWRCB to establish an effective system of Delta watershed diversion data collection and public reporting by December 31,

CONTINUED

2010. This bill requires the SWRCB to develop new instream flow criteria for the Delta ecosystem, as specified. The SWRCB will be required to submit those determinations to the council. This bill requires the SWRCB, in consultation with the council, to appoint a special master for the Delta, referred to as the Delta Watermaster. This bill grants specified authority to the Delta Watermaster.

The California Bay-Delta Authority Act establishes the California Bay-Delta Authority in the Resources Agency. The Act requires the authority and the implementing agencies to carry out 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 Programmatic Record of Decision, dated August 28, 2000, or as it may be amended.

This bill repeals that Act. This bill imposes requirements on the council in connection with the repeal of that Act.

These provisions would only become operative if SB 229, SB 458, AB 39, and AB 49 of the 2009-10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

DLW:mw 9/10/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*

**SENATE RULES COMMITTEE****SB 12**

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

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**CONFERENCE COMPLETED**

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Bill No: SB 12

Author: Simitian (D)

Amended: Conference Report No. 1 - 9/9/09

Vote: 21

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**CONFERENCE COMMITTEE VOTE:** 8-0, 9/9/09AYES: Senators Steinberg, Pavley, Padilla, and Florez, Assembly Members  
Bass, Huffman, Caballero, and SolorioNO VOTE RECORDED: Aanestad, Cogdill, Fuller, Huff, Jeffries, Nielsen

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**SUBJECT:** Sacramento-San Joaquin Delta Council**SOURCE:** Author

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**DIGEST:** Conference Committee Amendments delete the prior version of the bill which declares legislative intent to enact legislation to establish the Sacramento-San Joaquin Delta Stewardship Council. This bill now provides for a comprehensive plan for taking care of the Sacramento-San Joaquin Delta including the establishment of a Delta Stewardship Council and the Delta Independent Science Board. It expands the State Water Resources Control Board's collection and reporting of data concerning the delta and establishment of a Delta Watermaster. It also repeals the California Bay-Delta Authority. Lastly, the bill becomes operative if the other bills of the comprehensive water planning package are enacted – SB 229 (Pavley), SB 458 (Steinberg and Simitian), AB 39 (Huffman), and AB 49 (Feuer and Huffman).

**ANALYSIS:** Existing law generally provides that the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, may not be required to pay any fee for the performance of an official service. Existing

CONTINUED

law exempts from this provision any fee or charge for official services required pursuant to specified provisions of law relating to water use or water quality.

This bill expands the exemption to other provisions relating to water use, including provisions that require the payment of fees to the State Water Resources Control Board (SWRCB) for official services relating to statements of water diversion and use.

Existing law requires the Secretary of the Natural Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill establishes the Delta Stewardship Council as an independent agency of the state. The council would be required to consist of seven members appointed in a specified manner. This bill specifies the powers of the council. The council will be required to establish a consultation process for the purposes of the act. This bill requires a state or local public agency that proposes to undertake certain proposed actions that will occur within the boundaries of the Delta or the Suisun Marsh to prepare, and submit to the council, a specified written certification of consistency with the Delta Plan, created pursuant to AB 39 (Huffman), 2009-10 Regular Session, prior to taking those actions. By imposing these requirements on a local public agency, this bill imposes a state-mandated local program. This bill establishes an appeal process by which a person may claim that a proposed action is inconsistent with the Delta Plan, as prescribed.

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CONTINUED

2010. This bill requires the SWRCB to develop new instream flow criteria for the Delta ecosystem, as specified. The SWRCB will be required to submit those determinations to the council. This bill requires the SWRCB, in consultation with the council, to appoint a special master for the Delta, referred to as the Delta Watermaster. This bill grants specified authority to the Delta Watermaster.

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This bill repeals that Act. This bill imposes requirements on the council in connection with the repeal of that Act.

These provisions would only become operative if SB 229, SB 458, AB 39, and AB 49 of the 2009-10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.

### Background

The Delta. For several years, the Delta has suffered a crisis - ecosystem, water supply, levee stability, water quality, policy, program, and litigation. In June 2004, a privately owned levee failed and the state spent nearly \$100 million to fix it and save an island whose property value was far less. In August 2005, the Department of Fish and Game reported a trend showing severe decline in the Delta fishery. In 2006, the Legislature reorganized Delta programs and funding under the Resources Agency Secretary. In 2007, a federal judge, acting under the federal Endangered Species Act, declared illegal certain federal biological opinions about near-extinct fish and restricted water exports from the Delta, to the San Francisco Bay Area, the San Joaquin Valley and Southern California. The Governor shortly thereafter called the Legislature into an extraordinary session on water.

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), Chapter 535, Statutes of 2006, required a

cabinet committee to present recommendations for a Delta 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 the recommendations to the Legislature on January 3, 2009.

Legal Framework for the Delta. Since statehood, California has asked much of the Delta. Conflicting demands have led to crisis and conflict - between and among agencies, stakeholders and natural resources. The Delta Vision process spent more than 18 months, investigating the Delta, engaging agencies and stakeholders, and thinking carefully about the Delta's challenges and prospects for change. The Task Force's first recommendation was to change the fundamental legal framework for the state to make decisions as to its activities in the Delta - encapsulated in two "coequal goals" of "restoring the Delta ecosystem and creating a more reliable water supply for California."

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

DLW:mw 10/8/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*



Date of Hearing: April 14, 2009

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE  
Jared William Huffman, Chair  
AB 39 (Huffman) – As Amended: April 2, 2009

SUBJECT: Sacramento-San Joaquin Delta: Plan

SUMMARY: Requires development of a new plan for the Sacramento-San Joaquin Delta (Delta). Specifically, this bill:

- 1) Requires the California Water and Ecosystem Council to develop a plan to implement the Delta Vision Strategic Plan issued by the Delta Vision Blue Ribbon Task Force.
- 2) Requires submission of the plan to the Legislature before January 1, 2011.
- 3) Provides for definition of unspecified terms.

EXISTING LAW requires the Secretary of the Natural Resources Agency to develop a strategic plan for the Delta, and authorizes various state agencies, including the California Bay-Delta Authority, to implement projects under the CALFED Bay-Delta Program.

FISCAL EFFECT: Unknown

COMMENTS: For several years, the Delta has suffered a crisis – ecosystem, water supply, levee stability, water quality, policy, program, and litigation. In June 2004, a privately owned levee failed and the State spent nearly \$100 million to fix it and save an island whose property value was far less. In August 2005, the Department of Fish & Game (DFG) reported a trend showing severe decline in the Delta fishery. In 2006, the Legislature reorganized Delta programs and funding under the Resources Agency Secretary. In 2007, a federal judge, acting under the federal Endangered Species Act, declared illegal certain federal biological opinions about near-extinct fish and restricted water exports from the Delta, to the San Francisco Bay Area, the San Joaquin Valley and Southern California. The Governor shortly thereafter called the Legislature into an extraordinary session on water. In 2008 and 2009, the Delta watershed has suffered a serious drought, with federal and state water projects withholding water leading to violations of water quality standards.

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. AB 1574 (Kuehl/2006) required a cabinet committee to present recommendations for a Delta 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 the 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" (CDEW). The Strategic Plan provides a broad framework for action in the Delta, with numerous recommendations requiring action by the Legislature.



This bill would require CDEW, which has not been created, to develop a plan to implement the Task Force's Strategic Plan. Committee members received a copy of the Strategic Plan at the Committee's February hearing on the Delta. While the bill does not include details of the proposed plan, its reliance on the Strategic Plan means that its outline can be derived from the Strategic Plan's seven goals:

- 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.

The author asserts that this bill is a work-in-progress that will allow him to continue discussing direction for the Delta with other members and pursue some sense of common purpose. He has limited his amendments to this simple declarative sentence. While this bill remains simple at this point, a few policies or principles nevertheless emerge from the bill upon careful reading. First, the foundation for moving forward in the Delta is the Delta Vision Task Force's Strategic Plan. The bill, like the Cabinet Committee, adopts the Strategic Plan as the way forward. The Strategic Plan is so comprehensive that it may include enough actions for every Delta stakeholder to support and others to oppose. The depth and breadth of this plan allows for public discussion of the changes ahead for the Delta, which has proceeded in a variety of public meetings since October.

Second, a new, independent council will develop the plan in more detail and submit the plan to the Legislature. While CDEW will develop the plan, the bill does not specify the role of the Legislature once it receives the plan. Further legislative discussions may consider the role of the Legislature in making decisions on the Delta. While some agencies do not like having a new council to oversee agency Delta projects, recent failures of existing agencies to resolve the Delta crisis amid interagency conflict have led to an emerging consensus that Delta governance must change. Existing governance has failed.

Finally, the plan is due to be completed at the end of 2010, which is consistent with the Delta Vision Strategic Plan. The Natural Resources Agency currently leads a process to develop a Bay-Delta Conservation Plan (BDCP) on a different timeline. BDCP is designed to obtain federal permits to take certain species listed as threatened or endangered under the federal Endangered Species Act. The scope of the BDCP includes decisions on whether and where to build a peripheral canal to take water south and west of the Delta through the state and, possibly, federal water projects. The Administration has indicated it may complete the BDCP as early as the end of this year, and has set a goal to break ground on new Delta water conveyance in 2011.

As amended, this bill remains a work-in-progress, which will develop further through the legislative process. The author has committed to work with interested members through the legislative process and will return the bill to Committee upon completion by the Senate. Similarly, several Delta bills are now proceeding through the Senate, and this Committee will have the opportunity to consider and amend those bills when the Committee hears Senate bills in June. The author requests that the Committee allow this bill to proceed, so the Assembly will have a vehicle in the Senate for action on a comprehensive plan for the Delta. The other Assembly Delta bill whose author has committed to develop collaboratively is AB 13 (Salas) – the Delta conservancy bill.

In addition to the goals and policies identified above, issues that may require further analysis when a final Delta plan bill is developed include:

- policies and standards for Delta decisions
- process to resolve the policy and legal issues identified in the Strategic Plan
- implementation and enforcement of plan
- agency responsibilities for plan implementation
- relationship to existing laws and institutions
- financing of Delta projects and activities
- role of the Legislature in decisions related to the plan

REGISTERED SUPPORT / OPPOSITION:

Support: Natural Resources Defense Council (in concept)

Watch: Metropolitan Water District of So. Cal.

Opposition: None submitted

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

Date of Hearing: April 22, 2009

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Kevin De Leon, Chair

AB 39 (Huffman) – As Amended: April 2, 2009

Policy Committee: WPW

Vote: 9-1

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY

This bill requires the yet-to-be-created California Delta and Ecosystem Water Council (CDEWC) to prepare a plan to implement the Delta Vision Strategic Plan, issued by the Delta Vision Blue-Ribbon Task Force, and to submit that plan to the Legislature by January 1, 2011.

FISCAL EFFECT

One-time special fund costs, ranging from \$500,000 to \$1 million, to provide staffing and logistical support to the work of the CDEWC in its preparation of the plan called for by this bill.

COMMENTS

- 1) Rationale. The author, citing the numerous economic, ecological, infrastructure, legal, and governance challenges in the Sacramento-San Joaquin Delta, feels there is a pressing need for a comprehensive, long-term plan for management of the Delta. The author envisions this bill becoming a vehicle to further ongoing discussions about Delta management, with the recommendations made in the Delta Vision Strategic Plan being central to those discussions. However, the author acknowledges that this bill is a work in progress. As such, it currently lacks specificity beyond the creation of the CDEWC and the requirement to prepare a plan to be submitted to the Legislature.
- 2) Background. AB 1574 (Kuehl, 2006) required a cabinet committee to develop a new, long-term vision for the Delta. In response, the governor created the Delta Vision Blue-Ribbon Task Force, to advise the cabinet committee. In October 2008, the task force released its Strategic Plan, which the cabinet committee largely adopted and submitted to the Legislature in January of 2009. The principal recommendations included in the task force's Strategic Plan are:
  - a) Legally acknowledge the co-equal goals of restoring the Delta ecosystem and creating a more reliable water supply for California;
  - b) 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;
  - c) Restore the Delta ecosystem as the heart of a healthy estuary;
  - d) Promote statewide water conservation, efficiency, and sustainable use;

- e) Build facilities to improve the existing water conveyance system and expand statewide storage, and operate both to achieve the co-equal goals;
- f) Reduce risks to people, property, and state interest in the Delta by effective emergency preparedness, appropriate land uses, and strategic levee investments; and
- g) Establish a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve these goals.

Analysis Prepared by: Jay Dickenson / APPR. / (916) 319-2081

ASSEMBLY THIRD READING  
AB 39 (Huffman)  
As Amended April 2, 2009  
Majority vote

WATER, PARKS & WILDLIFE	9-1	APPROPRIATIONS	12-5
Ayes: Huffman, Chesbro, Blumenfield, Caballero, Krekorian, Bonnie Lowenthal, John A. Perez, Salas, Yamada		Ayes: De Leon, Ammiano, Charles Calderon, Davis, Fuentes, Hall, John A. Perez, Price, Skinner, Solorio, Torlakson, Krekorian	
Nays: Anderson		Nays: Nielsen, Duvall, Harkey, Miller, Audra Strickland	

SUMMARY: Requires development of a new plan for the Sacramento-San Joaquin Delta (Delta). Specifically, this bill:

- 1) Requires the California Water and Ecosystem Council to develop a plan to implement the Delta Vision Strategic Plan issued by the Delta Vision Blue Ribbon Task Force.
- 2) Requires submission of the plan to the Legislature before January 1, 2011.
- 3) Provides for definition of unspecified terms.

EXISTING LAW requires the Secretary of the Natural Resources Agency to develop a strategic plan for the Delta, and authorizes various state agencies, including the California Bay-Delta Authority, to implement Delta projects under the CALFED Bay-Delta Program.

FISCAL EFFECT: The Assembly Appropriations Committee estimates one-time, special fund costs of \$500,000 to \$1 million to create this Delta Plan.

COMMENTS: For several years, the Delta has suffered a crisis – ecosystem, water supply, levee stability, water quality, policy, program, and litigation. In June 2004, a privately owned levee failed and the State spent nearly \$100 million to fix it and save an island whose property value was far less. In August 2005, the Department of Fish & Game (DFG) reported a trend showing severe decline in the Delta fishery. In 2006, the Legislature reorganized Delta programs and funding under the Resources Agency Secretary. In 2007, a federal judge, acting under the federal Endangered Species Act, declared illegal certain federal biological opinions about near-extinct fish and restricted water exports from the Delta, to the San Francisco Bay Area, the San Joaquin Valley and Southern California. The Governor shortly thereafter called the Legislature into an extraordinary session on water.

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. AB 1574 (Kuehl) of 2006 required a cabinet committee to present recommendations for a Delta 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 the 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" (CDEW). The Strategic Plan provides a broad framework for action in the Delta, with numerous recommendations requiring action by the Legislature.

This bill would require CDEW, which has not been created, to develop a plan to implement the Task Force's Strategic Plan. Committee members received a copy of the Strategic Plan at the committee's February hearing on the Delta. While the bill does not include details of the proposed plan, its reliance on the Strategic Plan means that its outline can be derived from the Strategic Plan's seven goals:

- 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.

The author asserts that this bill is a work-in-progress that will allow continued discussion of the direction for the Delta. Legislators, from both houses and both parties, recently completed a series of weekly discussions of Delta issues. In the weeks ahead, after all the Delta bills from both houses proceed to the second house, a more complete set of proposals for addressing the Delta crisis may emerge. The author has committed to work with interested members through the legislative process. The other Assembly Delta bill whose author has committed to develop Delta legislation through bi-cameral collaboration is AB 13 (Salas) – the Delta conservancy bill.

CONCURRENCE IN SENATE AMENDMENTS

AB 39 (Huffman)

As Amended July 9, 2009

Majority vote

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ASSEMBLY:	(June 3, 2009)	SENATE:	21-14 (July 13, 2009)
(vote not relevant)			

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Original Committee Reference: W., P. & W.

SUMMARY: States legislative intent to establish a plan for the Sacramento-San Joaquin Delta (Delta).

The Senate amendments delete the Assembly version of this bill, and instead state only legislative intent regarding a Delta plan.

EXISTING LAW requires the Secretary of the Natural Resources Agency to develop a strategic plan for the Delta; and, authorizes various state agencies, including the California Bay-Delta Authority, to implement Delta projects under the CALFED Bay-Delta Program.

FISCAL EFFECT: None

COMMENTS: The Delta has suffered from crisis for several years – ecosystem, water supply, levee stability, water quality, policy, program, and litigation. Through this enduring Delta crisis, the Legislature and Governor Schwarzenegger initiated, in 2006, a process to develop a new long-term vision for the Delta. SB 1574 (Kuehl), Chapter 535, Statutes of 2006, required a cabinet committee to present recommendations for a Delta 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. Creation of a comprehensive Delta plan formed a cornerstone of the Strategic Plan's recommendations.

This year, the Legislature has examined closely the recommendations of both the Delta Vision Task Force and Cabinet Committee. Bi-cameral and bi-partisan working groups discussed the issues arising out of the Delta crisis. Several members introduced bills on a wide range of water issues, based at least in part on the Task Force's Strategic Plan. Since the bi-cameral discussions ended in May, several legislators, including the author of this bill, have discussed possible language for a set of bills related to Delta Vision. In light of the continuing budget deliberations, those discussions were not completed, so a conference committee on water-related bills was proposed. This bill, as amended by the Senate, simply states legislative intent to "establish" a Delta Plan. The author intends that, if a conference committee is convened, this bill would be included in conference.

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096



PROPOSED CONFERENCE REPORT NO. 1 - September 9, 2009

AB 39 (Huffman)

As Amended July 9, 2009

Majority vote

ASSEMBLY:	46-28	(June 3, 2009)	SENATE:	(July 13, 2009)
				(vote not relevant)

<u>ASSEMBLY CONFERENCE VOTE:</u>	4-0	<u>SENATE CONFERENCE VOTE:</u>	4-0
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Ayes:	Bass, Caballero, Huffman, Solorio	Ayes:	Steinberg, Florez, Padilla, Pavley
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Original Committee Reference: W., P. & W.

SUMMARY: Requires the Delta Stewardship Council (Council) to develop a new comprehensive plan for the Delta by 2012. Specifically, the conference committee amendments:

- 1) Require the Council to develop, adopt, and commence implementation of the "Delta Plan" by January 1, 2011, with a report to the Legislature by March 31, 2012.
  - a) Require Council to consider strategies and actions set forth in the Delta Vision Blue Ribbon Task Force Strategic Plan (Strategic Plan).
  - b) Allow Council to identify actions that state or local agencies may take to implement the subgoals or strategies.
  - c) Require consultation and cooperation between the Council and federal, state and local agencies in developing the Delta Plan.
  - d) Require Council to review the Delta Plan every five years, allowing the Council to request state agency recommendations for revisions.
  - e) Require the Council to develop the Plan consistent with federal statutes, including the Coastal Zone Management Act, Clean Water Act and the Reclamation Act.
- 2) Require Delta Protection Commission (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, for consideration by the Council as part of Delta Plan, including proposals for:
  - a) Federal/state designation of the Delta as a place of special significance.
  - b) Regional economic plan to increase investment in agriculture, recreation, tourism and other resilient land uses in the Delta, including administration of Delta Investment Fund.
  - c) Expansion of state recreation areas in the Delta.



- d) Market incentives and infrastructure to support Delta agriculture.
- 3) Require Delta Plan to further the coequal goals of Delta ecosystem restoration and a reliable water supply.
    - a) Limit geographic scope of ecosystem restoration projects to the Delta (defined separately as legal Delta, Suisun Marsh and Yolo Bypass), except for ecosystem projects outside the Delta that contribute to achievement of coequal goals.
    - b) Require Delta Plan to promote specified characteristics and include specified strategies for a healthy Delta ecosystem.
- 4) Require Delta Plan to promote a more reliable water supply to:
    - a) Assist in meeting the needs of reasonable and beneficial uses of water.
    - b) Sustain the economic vitality of the state.
    - c) Improve water quality to protect human health and the environment.
- 5) Require 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.
- 6) Require 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.
    - a) Allow Delta Plan to include actions outside the Delta that reduce flood risks, and local plans of flood protection.
    - b) Allow Council, in consultation with the Department of Transportation, to address climate change effects on state highways in the Delta in the Delta Plan.
    - c) Allow Council, in consultation with the California Energy Commission, to address the needs of Delta energy development, storage and distribution in the Delta Plan.
- 7) Require Delta Plan to meet the following requirements:
    - a) Be based on best available scientific information and advice from the Delta Independent Science Board.
    - b) Include quantified targets for achieving the objectives of the Delta Plan.
    - c) Utilize monitoring and analysis to determine progress toward targets.
    - d) Describe methods to measure progress.

- e) Include adaptive management strategy for ecosystem restoration and water management.
- 8) Require DWR to prepare proposal to coordinate flood and water supply operations of the State Water Project and Central Valley Project, for Council consideration.
- 9) Allow Council to incorporate other completed Delta-related plans into Delta Plan.
- 10) Condition enactment on enactment of AB 49, SB 12, SB 229 and SB 458.

EXISTING LAW requires the Secretary of the Natural Resources Agency to develop a strategic plan for the Delta, and authorizes various state agencies, including the California Bay-Delta Authority, to implement Delta projects under the CALFED Bay-Delta Program.

AS PASSED BY THE ASSEMBLY, this bill required a Delta Plan, but had no further substance.

The Senate amendments stripped all substantive provisions, transforming bill into legislative intent statement regarding development of a Delta Plan.

FISCAL EFFECT: The Assembly Appropriations Committee estimated one-time, special fund costs of \$500,000 to \$1 million to create this Delta Plan.

COMMENTS: For several years, the Delta has suffered a crisis – ecosystem, water supply, levee stability, water quality, policy, program, and litigation. In June 2004, a privately owned levee failed and the State spent nearly \$100 million to fix it and save an island whose property value was far less. In August 2005, the Department of Fish & Game (DFG) reported a trend showing severe decline in the Delta fishery. In 2006, the Legislature reorganized Delta programs and funding under the Resources Agency Secretary. In 2007, a federal judge, acting under the federal Endangered Species Act, declared illegal certain federal biological opinions about near-extinct fish and restricted water exports from the Delta, to the San Francisco Bay Area, the San Joaquin Valley and Southern California. The Governor shortly thereafter called the Legislature into an extraordinary session on water.

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) of 2006 required a cabinet committee to present recommendations for a Delta 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 the recommendations to the Legislature on January 3, 2009. This year, the Legislature held numerous hearings on Delta Vision and a set of five bills, including this one. In August, policy committees in both houses held hearings on the topics in these bills, and considered "pre-print" versions. Conference Committee substantially amended the pre-prints.

Delta Plan: This bill will set a new course for the Delta, by requiring the new Delta Stewardship Council to develop a new, comprehensive Delta Plan. This bill, however, comprises only one part of a larger, new division in the Water Code, whose other parts are enacted by SB 12 (Simitian), which creates the legal foundation for developing the new Delta Plan. A key example is the definition of the "coequal goals" of ecosystem restoration and a more reliable water supply, which the Delta Plan will "further."

Federal Government Participation: In order to encourage federal government participation under the State's leadership, AB 39 requires the Delta Plan to be developed consistent with certain statutes that allow for certain state discretion over federal activities. These statutes include the Coastal Zone Management Act (CZMA), the Reclamation Act of 1902 (which governs the Bureau of Reclamation's Central Valley Project), and the Clean Water Act. If the Council decides to adopt the Delta Plan pursuant to the CZMA, then the bill requires submission to the Secretary of Commerce for approval, so the State may exercise certain authority over federal agency actions. It is widely anticipated that California may need Congress to enact laws to protect the Delta consistent with the State's plan – perhaps a "Delta Zone Management Act." This bill allows for that eventuality, by providing for submission of the Delta Plan to whatever federal official a subsequent federal statute identifies.

Conference Committee Amendments: The Conference Committee amendments added substantive detail as to the nature of the Delta Plan, focusing on balancing the two coequal goals of ecosystem restoration and water supply reliability. The amendments to the pre-print versions of the bill narrowed the focus of the ecosystem restoration to the Delta, and not its entire watershed, and eliminated the authority of the Council to direct other state agencies to contribute to the Delta Plan.

Levees/Flood Protection: The bill requires the Delta Plan to reduce risks to people, property and state interests in the Delta with emergency preparedness, appropriate land uses and strategic levee investments. The Delta Plan will include recommendations for priorities for state investments in levees. These recommendations, in combination with the Council's authority to ensure that state agencies act consistently with the Delta Plan (in SB 12), will ensure that spending by DWR and the Central Valley Flood Protection Board (CVFPB) reflects these priorities. The Legislature generally does not appropriate funding to specific Delta levee projects, and has not been successful in imposing priorities on state levee spending in the Delta. Instead, the State Budget leaves the discretion to DWR and the CVFPB to determine how to spend state money on both levees in the State Plan of Flood Control and non-project levees. These priorities will affect both the Delta levee subvention program (non-project levees) and the special projects program (levees with a State interest).

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

FN: 0003146

**SENATE RULES COMMITTEE**AB 39

Office of Senate Floor Analyses

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**THIRD READING**

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Bill No: AB 39

Author: Huffman (D)

Amended: 7/9/09 in Senate

Vote: 21

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**WITHOUT REFERENCE TO COMMITTEE****ASSEMBLY FLOOR:** 46-28, 6/3/09 - See last page for vote

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**SUBJECT:** Sacramento-San Joaquin Delta**SOURCE:** Author

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**DIGEST:** This bill states the intent of the Legislature to enact legislation to establish a Sacramento-San Joaquin Delta Plan.**ANALYSIS:** Existing law requires various state agencies to carry out programs, projects, and activities on behalf of the Sacramento-San Joaquin Delta and Suisun Marsh. Existing law requires the Secretary of the Natural Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, a Strategic Vision for a Sustainable Sacramento-San Joaquin Delta with specified components.**Comments**

According to sources: "This year, the Legislature has examined closely the recommendations of both the Delta Vision Task Force and Cabinet Committee. Bi-cameral and bi-partisan working groups discussed the issues arising out of the Delta crisis. Several members introduced bills on a wide range of water issues, based at least in part on the Task Force's Strategic

CONTINUED

Plan. Since the bi-cameral discussions ended in May, several legislators, including the author of this bill, have discussed possible language for a set of bills related to Delta Vision. In light of the continuing budget deliberations, those discussions were not completed, so a conference committee on water-related bills was proposed. This bill, as amended on the Assembly Floor, simply states legislative intent to create a new Delta Council. The author intends that, if a conference committee is convened, this bill would be included in conference.”

This bill states the intent of the Legislature to enact legislation to establish a Sacramento-San Joaquin Delta Plan.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**ASSEMBLY FLOOR:**

AYES: Ammiano, Arambula, Beall, Blumenfield, Brownley, Caballero, Charles Calderon, Carter, Chesbro, Coto, Davis, De La Torre, De Leon, Eng, Evans, Feuer, Fong, Fuentes, Furutani, Hall, Hayashi, Hernandez, Hill, Huffman, Jones, Krekorian, Lieu, Bonnie Lowenthal, Ma, Mendoza, Monning, Nava, John A. Perez, V. Manuel Perez, Portantino, Price, Ruskin, Salas, Saldana, Skinner, Solorio, Swanson, Torlakson, Torres, Torrico, Bass

NOES: Adams, Anderson, Bill Berryhill, Tom Berryhill, Blakeslee, Buchanan, Conway, Cook, DeVore, Duvall, Gaines, Garrick, Gilmore, Hagman, Harkey, Huber, Jeffries, Knight, Logue, Miller, Nestande, Niello, Nielsen, Silva, Smyth, Audra Strickland, Tran, Villines

NO VOTE RECORDED: Block, Emmerson, Fletcher, Fuller, Galgiani, Yamada

CTW:mw 7/10/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* END \*\*\*\*

**SENATE RULES COMMITTEE**AB 39

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**CONFERENCE COMPLETED**

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Bill No: AB 39

Author: Huffman (D)

Amended: Conference Report No. 1 - 9/9/09

Vote: 21

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**CONFERENCE COMMITTEE VOTE:** 8-0, 9/9/09AYES: Senators Steinberg, Pavley, Padilla, and Florez, Assembly Members  
Bass, Huffman, Caballero, and Solorio

NO VOTE RECORDED: Aanestad, Cogdill, Fuller, Huff, Jeffries, Nielsen

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**SUBJECT:** Sacramento-San Joaquin Delta: Delta Plan**SOURCE:** Author

---

**DIGEST:** Conference Committee Amendments delete the prior version of the bill stating the intent of the Legislature to enact legislation to establish a Sacramento-San Joaquin Delta Plan. This bill now requires the Delta Stewardship Council, created pursuant to SB 12 (Simitian), 2009-10 Regular Session, on or before January 1, 2012, to develop, adopt, and commence implementation of a comprehensive management plan for the Delta, meeting specified requirements. The provisions of this bill only become operative if AB 49 (Feuer), SB 12 (Simitian), SB 229 (Pavley), and SB 458 (Steinberg and Simitian) of the 2009-10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.

**ANALYSIS:** Existing law requires various state agencies to administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta. Existing law requires the Secretary of the Natural Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31,

CONTINUED

2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill requires the Delta Stewardship Council to be created by SB 12, on or before January 1, 2012, to develop, adopt, and commence implementation of the Delta Plan pursuant to this part that furthers the coequal goals. The Delta Plan shall include subgoals and strategies to assist in guiding state and local agency actions related to the Delta. In developing the Delta Plan, the council shall consider each of the strategies and actions set forth in the Strategic Plan and may include any of those strategies or actions in the Delta Plan. The Delta Plan may also identify specific actions that state or local agencies may take to implement the subgoals and strategies. In developing the Delta Plan, the Council shall consult with federal, state, and local agencies with responsibilities in the Delta. All state agencies with responsibilities in the Delta shall cooperate with the council in developing the Delta Plan, upon request of the Council. The council shall review the Delta Plan at least once every five years and may revise it as the Council deems appropriate. The Council may request any state agency with responsibilities in the Delta to make recommendations with respect to revision of the Delta Plan. The Council shall develop the Delta Plan consistent with all of the following:

1. The federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), or an equivalent compliance mechanism.
2. Section 8 of the federal Reclamation Act of 1902.
3. The federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.).

If the Council adopts a Delta Plan pursuant to the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the Council shall submit the Delta Plan for approval to the United States Secretary of Commerce pursuant to that act, or to any other federal official assigned responsibility for the Delta pursuant to a federal statute enacted after January 1, 2010.

The Council shall report to the Legislature no later than March 31, 2012, as to its adoption of the Delta Plan.

Requires the Delta Protection Commission, established by SB 12 (Simitian), to develop, for consideration and incorporation into the Delta Plan by the

CONTINUED



Council, a proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place, in a manner consistent with the coequal goals. For the purpose of carrying out this subdivision, the commission may include in the proposal the relevant strategies described in the Strategic Plan. The Commission shall include in the proposal a plan to establish state and federal designation of the Delta as a place of special significance, which may include application for a federal designation of the Delta as a National Heritage Area. The Commission shall include in the proposal a regional economic plan to support increased investment in agriculture, recreation, tourism, and other resilient land uses in the Delta. The regional economic plan shall include detailed recommendations for the administration of the Delta Investment Fund created by Section 29778.5 of the Public Resources Code.

For the purposes of assisting the Commission in its preparation of the proposal, both of the following actions shall be undertaken:

1. The Department of Parks and Recreation (DPR) shall prepare a proposal, for submission to the commission, to expand within the Delta the network of state recreation areas, combining existing and newly designated areas. The proposal may incorporate appropriate aspects of any existing plans, including the Central Valley Vision Implementation Plan adopted by the DPR.
2. The Department of Food and Agriculture shall prepare a proposal, for submission to the Commission, to establish market incentives and infrastructure to protect and enhance the economic and public values of Delta agriculture.

The Commission shall submit the proposal developed pursuant to subdivision (a) to the Council. The Council shall consider the proposal and may include any portion of the proposal in the Delta Plan as it deems appropriate, to the extent that the proposal furthers the coequal goals.

Implementation of the Delta Plan is to further the restoration of the Delta ecosystem and a reliable water supply. The geographic scope of the ecosystem restoration projects and programs identified in the Delta Plan shall be the Delta, except that the Delta Plan may include recommended ecosystem projects outside the Delta that will contribute to achievement of



the coequal goals. The Delta Plan shall include measures that promote all of the following characteristics of a healthy Delta ecosystem:

1. Viable populations of native resident and migratory species.
2. Functional corridors for migratory species.
3. Diverse and biologically appropriate habitats and ecosystem processes.
4. Reduced threats and stresses on the Delta ecosystem.
5. Conditions conducive to meeting or exceeding the goals in existing species recovery plans and state and federal goals with respect to doubling salmon populations.

The Delta Plan shall include measures to promote a more reliable water supply that do all of the following:

1. Assist in meeting the needs for reasonable and beneficial uses of water.
2. Sustain the economic vitality of the state.
3. Improve water quality to protect human health and the environment.

The following subgoals and strategies for restoring a healthy ecosystem shall be included in the Delta Plan:

1. Restore large areas of interconnected habitats within the Delta and its watershed by 2100.
2. Establish migratory corridors for fish, birds, and other animals along selected Delta river channels.
3. Promote self-sustaining, diverse populations of native and valued species by reducing the risk of take and harm from invasive species.
4. Restore Delta flows and channels to support a healthy estuary and other ecosystems.
5. Improve water quality to meet drinking water, agriculture, and ecosystem long-term goals.
6. Restore habitat necessary to avoid a net-loss of migratory bird habitat.

The Council shall consider, for incorporation into the Delta Plan, actions designed to implement the subgoals and strategies described above.

CONTINUED

In carrying out this section, the Council shall make use of the best available science.

The Delta Plan shall include recommendations regarding state agency management of lands in the Delta.

The Delta Plan shall promote statewide water conservation, water use efficiency, and sustainable use of water.

The Delta Plan shall promote options for new and improved infrastructure relating to the water conveyance and storage systems and for the operation of both to achieve the coequal goals.

The Delta Plan shall 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.

The Council may incorporate into the Delta Plan the emergency preparedness and response strategies for the Delta developed by the California Emergency Management Agency.

The Council, in consultation with the Central Valley Flood Protection Board, shall recommend in the Delta Plan priorities for state investments in levee operation, maintenance, and improvements in the Delta, including both levees that are a part of the State Plan of Flood Control and nonproject levees.

The Delta Plan may identify actions to be taken outside of the Delta, if those actions are determined to significantly reduce flood risks in the Delta.

The Delta Plan may include local plans of flood protection.

The Council, in consultation with the Department of Transportation, may address in the Delta Plan the effects of climate change and sea level rise on the three state highways that cross the Delta.

The Council, in consultation with the State Energy Resources Conservation and Development Commission and the Public Utilities Commission, may incorporate into the Delta Plan additional actions to address the needs of Delta energy development, energy storage, and energy distribution.

CONTINUED

The Delta Plan shall meet all of the following requirements:

1. Be based on the best available scientific information and the independent science advice provided by the Delta Independent Science Board.
2. Include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan.
3. Where appropriate, utilize monitoring, data collection, and analysis of actions sufficient to determine progress toward meeting the quantified targets.
4. Describe the methods by which the council shall measure progress toward achieving the coequal goals.
5. Where appropriate, recommend integration of scientific and monitoring results into ongoing Delta water management.
6. Include a science-based, transparent, and formal adaptive management strategy for ongoing ecosystem restoration and water management decisions.

The Department of Water Resources (DWR), in consultation with the United States Army Corps of Engineers and the Central Valley Flood Protection Board, shall prepare a proposal to coordinate flood and water supply operations of the State Water Project and the federal Central Valley Project, and submit the proposal to the council for consideration for incorporation into the Delta Plan. In drafting the proposal, DWR shall consider all related actions set forth in the Strategic Plan.

The Council may incorporate other completed plans related to the Delta into the Delta Plan to the extent that the other plans promote the coequal goals.

This act shall only become operative if AB 49, SB 12, SB 229, and SB 458 of the 2009-10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.

Comments

CONTINUED

This year, the Legislature has examined closely the recommendations of both the Delta Vision Task Force and Cabinet Committee. Bi-cameral and bi-partisan working groups discussed the issues arising out of the Delta crisis. Several members introduced bills on a wide range of water issues, based at least in part on the Task Force's Strategic Plan. Since the bi-cameral discussions ended in May, several legislators, including the author of this bill, have discussed possible language for a set of bills related to Delta Vision.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

DLW:mw 9/10/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*

**SENATE RULES COMMITTEE**AB 39

Office of Senate Floor Analyses

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**CONFERENCE COMPLETED**

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Bill No: AB 39

Author: Huffman (D)

Amended: Conference Report No. 1 - 9/9/09

Vote: 21

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**CONFERENCE COMMITTEE VOTE:** 8-0, 9/9/09AYES: Senators Steinberg, Pavley, Padilla, and Florez, Assembly Members  
Bass, Huffman, Caballero, and Solorio

NO VOTE RECORDED: Aanestad, Cogdill, Fuller, Huff, Jeffries, Nielsen

---

**SUBJECT:** Sacramento-San Joaquin Delta: Delta Plan**SOURCE:** Author

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**DIGEST:** Conference Committee Amendments delete the prior version of the bill stating the intent of the Legislature to enact legislation to establish a Sacramento-San Joaquin Delta Plan. This bill now requires the Delta Stewardship Council, created pursuant to SB 12 (Simitian), 2009-10 Regular Session, on or before January 1, 2012, to develop, adopt, and commence implementation of a comprehensive management plan for the Delta, meeting specified requirements. The provisions of this bill only become operative if AB 49 (Feuer), SB 12 (Simitian), SB 229 (Pavley), and SB 458 (Steinberg and Simitian) of the 2009-10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.

**ANALYSIS:** Existing law requires various state agencies to administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta. Existing law requires the Secretary of the Natural Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31,

CONTINUED

2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill requires the Delta Stewardship Council to be created by SB 12, on or before January 1, 2012, to develop, adopt, and commence implementation of the Delta Plan pursuant to this part that furthers the coequal goals. The Delta Plan shall include subgoals and strategies to assist in guiding state and local agency actions related to the Delta. In developing the Delta Plan, the council shall consider each of the strategies and actions set forth in the Strategic Plan and may include any of those strategies or actions in the Delta Plan. The Delta Plan may also identify specific actions that state or local agencies may take to implement the subgoals and strategies. In developing the Delta Plan, the Council shall consult with federal, state, and local agencies with responsibilities in the Delta. All state agencies with responsibilities in the Delta shall cooperate with the council in developing the Delta Plan, upon request of the Council. The council shall review the Delta Plan at least once every five years and may revise it as the Council deems appropriate. The Council may request any state agency with responsibilities in the Delta to make recommendations with respect to revision of the Delta Plan. The Council shall develop the Delta Plan consistent with all of the following:

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If the Council adopts a Delta Plan pursuant to the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the Council shall submit the Delta Plan for approval to the United States Secretary of Commerce pursuant to that act, or to any other federal official assigned responsibility for the Delta pursuant to a federal statute enacted after January 1, 2010.

The Council shall report to the Legislature no later than March 31, 2012, as to its adoption of the Delta Plan.

Requires the Delta Protection Commission, established by SB 12 (Simitian), to develop, for consideration and incorporation into the Delta Plan by the

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Council, a proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place, in a manner consistent with the coequal goals. For the purpose of carrying out this subdivision, the commission may include in the proposal the relevant strategies described in the Strategic Plan. The Commission shall include in the proposal a plan to establish state and federal designation of the Delta as a place of special significance, which may include application for a federal designation of the Delta as a National Heritage Area. The Commission shall include in the proposal a regional economic plan to support increased investment in agriculture, recreation, tourism, and other resilient land uses in the Delta. The regional economic plan shall include detailed recommendations for the administration of the Delta Investment Fund created by Section 29778.5 of the Public Resources Code.

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The Council shall consider, for incorporation into the Delta Plan, actions designed to implement the subgoals and strategies described above.

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In carrying out this section, the Council shall make use of the best available science.

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The Delta Plan shall promote statewide water conservation, water use efficiency, and sustainable use of water.

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The Council may incorporate into the Delta Plan the emergency preparedness and response strategies for the Delta developed by the California Emergency Management Agency.

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The Delta Plan may identify actions to be taken outside of the Delta, if those actions are determined to significantly reduce flood risks in the Delta.

The Delta Plan may include local plans of flood protection.

The Council, in consultation with the Department of Transportation, may address in the Delta Plan the effects of climate change and sea level rise on the three state highways that cross the Delta.

The Council, in consultation with the State Energy Resources Conservation and Development Commission and the Public Utilities Commission, may incorporate into the Delta Plan additional actions to address the needs of Delta energy development, energy storage, and energy distribution.

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The Delta Plan shall meet all of the following requirements:

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The Council may incorporate other completed plans related to the Delta into the Delta Plan to the extent that the other plans promote the coequal goals.

This act shall only become operative if AB 49, SB 12, SB 229, and SB 458 of the 2009-10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.

Background

CONTINUED

The Delta. For several years, the Delta has suffered a crisis - ecosystem, water supply, levee stability, water quality, policy, program, and litigation. In June 2004, a privately owned levee failed and the state spent nearly \$100 million to fix it and save an island whose property value was far less. In August 2005, the Department of Fish and Game reported a trend showing severe decline in the Delta fishery. In 2006, the Legislature reorganized Delta programs and funding under the Resources Agency Secretary. In 2007, a federal judge, acting under the federal Endangered Species Act, declared illegal certain federal biological opinions about near-extinct fish and restricted water exports from the Delta, to the San Francisco Bay Area, the San Joaquin Valley and Southern California. The Governor shortly thereafter called the Legislature into an extraordinary session on water.

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), Chapter 535, Statutes of 2006, required a cabinet committee to present recommendations for a Delta 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 the recommendations to the Legislature on January 3, 2009.

Legal Framework for the Delta. Since statehood, California has asked much of the Delta. Conflicting demands have led to crisis and conflict - between and among agencies, stakeholders and natural resources. The Delta Vision process spent more than 18 months, investigating the Delta, engaging agencies and stakeholders, and thinking carefully about the Delta's challenges and prospects for change. The Task Force's first recommendation was to change the fundamental legal framework for the state to make decisions as to its activities in the Delta - encapsulated in two "coequal goals" of "restoring the Delta ecosystem and creating a more reliable water supply for California."

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

DLW:mw 10/8/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* END \*\*\*\*

**SENATE RULES COMMITTEE**AB 39

Office of Senate Floor Analyses

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**CONFERENCE COMPLETED**

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Bill No: AB 39

Author: Huffman (D)

Amended: Conference Report No. 1 - 9/9/09

Vote: 21

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**CONFERENCE COMMITTEE VOTE:** 8-0, 9/9/09AYES: Senators Steinberg, Pavley, Padilla, and Florez, Assembly Members  
Bass, Huffman, Caballero, and Solorio

NO VOTE RECORDED: Aanestad, Cogdill, Fuller, Huff, Jeffries, Nielsen

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**SUBJECT:** Sacramento-San Joaquin Delta: Delta Plan**SOURCE:** Author

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**DIGEST:** Conference Committee Amendments delete the prior version of the bill stating the intent of the Legislature to enact legislation to establish a Sacramento-San Joaquin Delta Plan. This bill now requires the Delta Stewardship Council, created pursuant to SB 12 (Simitian), 2009-10 Regular Session, on or before January 1, 2012, to develop, adopt, and commence implementation of a comprehensive management plan for the Delta, meeting specified requirements. The provisions of this bill only become operative if AB 49 (Feuer), SB 12 (Simitian), SB 229 (Pavley), and SB 458 (Steinberg and Simitian) of the 2009-10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.

**ANALYSIS:** Existing law requires various state agencies to administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta. Existing law requires the Secretary of the Natural Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31,

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2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill requires the Delta Stewardship Council to be created by SB 12, on or before January 1, 2012, to develop, adopt, and commence implementation of the Delta Plan pursuant to this part that furthers the coequal goals. The Delta Plan shall include subgoals and strategies to assist in guiding state and local agency actions related to the Delta. In developing the Delta Plan, the council shall consider each of the strategies and actions set forth in the Strategic Plan and may include any of those strategies or actions in the Delta Plan. The Delta Plan may also identify specific actions that state or local agencies may take to implement the subgoals and strategies. In developing the Delta Plan, the Council shall consult with federal, state, and local agencies with responsibilities in the Delta. All state agencies with responsibilities in the Delta shall cooperate with the council in developing the Delta Plan, upon request of the Council. The council shall review the Delta Plan at least once every five years and may revise it as the Council deems appropriate. The Council may request any state agency with responsibilities in the Delta to make recommendations with respect to revision of the Delta Plan. The Council shall develop the Delta Plan consistent with all of the following:

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If the Council adopts a Delta Plan pursuant to the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the Council shall submit the Delta Plan for approval to the United States Secretary of Commerce pursuant to that act, or to any other federal official assigned responsibility for the Delta pursuant to a federal statute enacted after January 1, 2010.

The Council shall report to the Legislature no later than March 31, 2012, as to its adoption of the Delta Plan.

Requires the Delta Protection Commission, established by SB 12 (Simitian), to develop, for consideration and incorporation into the Delta Plan by the

CONTINUED

Council, a proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place, in a manner consistent with the coequal goals. For the purpose of carrying out this subdivision, the commission may include in the proposal the relevant strategies described in the Strategic Plan. The Commission shall include in the proposal a plan to establish state and federal designation of the Delta as a place of special significance, which may include application for a federal designation of the Delta as a National Heritage Area. The Commission shall include in the proposal a regional economic plan to support increased investment in agriculture, recreation, tourism, and other resilient land uses in the Delta. The regional economic plan shall include detailed recommendations for the administration of the Delta Investment Fund created by Section 29778.5 of the Public Resources Code.

For the purposes of assisting the Commission in its preparation of the proposal, both of the following actions shall be undertaken:

1. The Department of Parks and Recreation (DPR) shall prepare a proposal, for submission to the commission, to expand within the Delta the network of state recreation areas, combining existing and newly designated areas. The proposal may incorporate appropriate aspects of any existing plans, including the Central Valley Vision Implementation Plan adopted by the DPR.
2. The Department of Food and Agriculture shall prepare a proposal, for submission to the Commission, to establish market incentives and infrastructure to protect and enhance the economic and public values of Delta agriculture.

The Commission shall submit the proposal developed pursuant to subdivision (a) to the Council. The Council shall consider the proposal and may include any portion of the proposal in the Delta Plan as it deems appropriate, to the extent that the proposal furthers the coequal goals.

Implementation of the Delta Plan is to further the restoration of the Delta ecosystem and a reliable water supply. The geographic scope of the ecosystem restoration projects and programs identified in the Delta Plan shall be the Delta, except that the Delta Plan may include recommended ecosystem projects outside the Delta that will contribute to achievement of

the coequal goals. The Delta Plan shall include measures that promote all of the following characteristics of a healthy Delta ecosystem:

1. Viable populations of native resident and migratory species.
2. Functional corridors for migratory species.
3. Diverse and biologically appropriate habitats and ecosystem processes.
4. Reduced threats and stresses on the Delta ecosystem.
5. Conditions conducive to meeting or exceeding the goals in existing species recovery plans and state and federal goals with respect to doubling salmon populations.

The Delta Plan shall include measures to promote a more reliable water supply that do all of the following:

1. Assist in meeting the needs for reasonable and beneficial uses of water.
2. Sustain the economic vitality of the state.
3. Improve water quality to protect human health and the environment.

The following subgoals and strategies for restoring a healthy ecosystem shall be included in the Delta Plan:

1. Restore large areas of interconnected habitats within the Delta and its watershed by 2100.
2. Establish migratory corridors for fish, birds, and other animals along selected Delta river channels.
3. Promote self-sustaining, diverse populations of native and valued species by reducing the risk of take and harm from invasive species.
4. Restore Delta flows and channels to support a healthy estuary and other ecosystems.
5. Improve water quality to meet drinking water, agriculture, and ecosystem long-term goals.
6. Restore habitat necessary to avoid a net-loss of migratory bird habitat.

The Council shall consider, for incorporation into the Delta Plan, actions designed to implement the subgoals and strategies described above.

CONTINUED



In carrying out this section, the Council shall make use of the best available science.

The Delta Plan shall include recommendations regarding state agency management of lands in the Delta.

The Delta Plan shall promote statewide water conservation, water use efficiency, and sustainable use of water.

The Delta Plan shall promote options for new and improved infrastructure relating to the water conveyance and storage systems and for the operation of both to achieve the coequal goals.

The Delta Plan shall 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.

The Council may incorporate into the Delta Plan the emergency preparedness and response strategies for the Delta developed by the California Emergency Management Agency.

The Council, in consultation with the Central Valley Flood Protection Board, shall recommend in the Delta Plan priorities for state investments in levee operation, maintenance, and improvements in the Delta, including both levees that are a part of the State Plan of Flood Control and nonproject levees.

The Delta Plan may identify actions to be taken outside of the Delta, if those actions are determined to significantly reduce flood risks in the Delta.

The Delta Plan may include local plans of flood protection.

The Council, in consultation with the Department of Transportation, may address in the Delta Plan the effects of climate change and sea level rise on the three state highways that cross the Delta.

The Council, in consultation with the State Energy Resources Conservation and Development Commission and the Public Utilities Commission, may incorporate into the Delta Plan additional actions to address the needs of Delta energy development, energy storage, and energy distribution.

CONTINUED



The Delta Plan shall meet all of the following requirements:

1. Be based on the best available scientific information and the independent science advice provided by the Delta Independent Science Board.
2. Include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan.
3. Where appropriate, utilize monitoring, data collection, and analysis of actions sufficient to determine progress toward meeting the quantified targets.
4. Describe the methods by which the council shall measure progress toward achieving the coequal goals.
5. Where appropriate, recommend integration of scientific and monitoring results into ongoing Delta water management.
6. Include a science-based, transparent, and formal adaptive management strategy for ongoing ecosystem restoration and water management decisions.

The Department of Water Resources (DWR), in consultation with the United States Army Corps of Engineers and the Central Valley Flood Protection Board, shall prepare a proposal to coordinate flood and water supply operations of the State Water Project and the federal Central Valley Project, and submit the proposal to the council for consideration for incorporation into the Delta Plan. In drafting the proposal, DWR shall consider all related actions set forth in the Strategic Plan.

The Council may incorporate other completed plans related to the Delta into the Delta Plan to the extent that the other plans promote the coequal goals.

This act shall only become operative if AB 49, SB 12, SB 229, and SB 458 of the 2009-10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.

Comments

CONTINUED

This year, the Legislature has examined closely the recommendations of both the Delta Vision Task Force and Cabinet Committee. Bi-cameral and bi-partisan working groups discussed the issues arising out of the Delta crisis. Several members introduced bills on a wide range of water issues, based at least in part on the Task Force's Strategic Plan. Since the bi-cameral discussions ended in May, several legislators, including the author of this bill, have discussed possible language for a set of bills related to Delta Vision.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

DLW:mw 9/10/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*

# Preprint AB 1 (AB 39 content) – Assemblyman Huffman

## Summary & Comments

**SUMMARY:** Establishes new legal framework for Sacramento-San Joaquin Delta policy, requires near-term actions, and requires development of a new Delta Plan. Specifically, this proposal:

- 1) Establishes “coequal goals” of improving statewide water supply reliability and restoring the Delta ecosystem as the overarching management objectives for the Delta.
- 2) Requires development of comprehensive Delta Plan as centerpiece of state policy and investments in the Delta, as specified, by 2011 (with report to the Legislature by 3/31/12).
  - a) Requires council to consult with federal, state, and local agencies with responsibilities in the Delta, and consider state agency proposals for the Delta Plan. Authorizes the council to appoint state agencies to contribute to development of the plan.
  - b) Requires council to develop the Delta Plan consistent with federal law allowing the State to influence federal agency actions in the Delta (*e.g.* Coastal Zone Management Act).
  - c) Requires council to review and revise the plan every five years.
  - d) Specifies required components of Delta Plan, consistent with Strategic Plan goals:
    - i) Proposal developed by Delta Protection Commission to protect the Delta as an evolving place, with specified state agencies contributing portions.
    - ii) Ecosystem restoration to achieve, upon implementation, restoration of the Delta ecosystem, as defined and with scope of plan extending to first dam on the tributaries.
    - iii) Statewide water conservation, efficiency, and sustainable use, with recommendations to Legislature necessary to implement those actions.
    - iv) Options for water conveyance, water storage, and improved reservoir operations to achieve the Coequal Goals, and to integrate flood and water supply operations.
    - v) Reduced risks from Delta levee failures, including effective emergency preparedness, priorities for State levee investments, and local flood protection plans.
  - e) Requires the Delta Plan to be based on best available scientific information, and include quantified targets for achievement, effective adaptive management, and participation by the Delta Independent Science Board.
- 3) Preserves and does not supersede, preempt or amend existing environmental or water laws, including “area of origin” laws, California Endangered Species Act, water rights, and the Natural Community Conservation Planning (NCCP) Act.

- 4) Requires specified early actions, including actions related to governance, water supply reliability, instream flow determinations, and ecosystem restoration.
- 5) Requires that the Administration's "Bay Delta Conservation Plan," which is currently in development, comply with standards and requirements in the NCCP Act and the "habitat conservation plan" (HCP) provisions of federal Endangered Species Act (ESA).
  - a) Requires Department of Water Resources (DWR) to develop (including completion of an environmental impact report/EIR) , in consultation with the council, and propose an NCCP-compliant plan to the Department of Fish & Game (DFG) and states legislative intent that the plan also be developed as an HCP under ESA.
  - b) Requires the Delta Independent Science Board to review the EIR and submit findings to the council within 60 days of receipt.
  - c) Requires DWR to submit the final EIR to the council and authorizes the council, exclusively, to certify the final EIR.
  - d) Requires the Council to incorporate the Bay Delta Conservation Plan (BDCP) into the Delta Plan *if* the Council determines, in writing and after at least one public hearing, that:
    - i) BDCP is based on best available science and comprehensive investigation/analysis of:
      - (1) volume, quality, and timing of water required for a healthy Delta estuarine ecosystem under different conditions
      - (2) full range of Delta conveyance alternatives, including impacts to ecosystem
      - (3) full range of capacity/design options for conveyance alternatives, including a lined canal, unlined canal and pipelines
      - (4) potential effects of climate change
      - (5) potential impacts on migratory fish and aquatic resources
      - (6) potential impacts on Sacramento River and San Joaquin River flood management
      - (7) resilience and recovery in the event of catastrophic loss by natural disaster
      - (8) probability of achieving current Delta water quality for conveyance alternatives
    - ii) BDCP includes:
      - (1) objective to achieve goals in existing species recovery plans
      - (2) science-based and formal adaptive management program, as specified
  - e) Requires Delta Independent Science Board to evaluate BDCP achievements annually.
- 6) Defines certain terms for application to new Division 35 of the Water Code, including:
  - a) "Co-equal Goals" mean "the two goals of assuring a 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, and agricultural values of the Delta as an evolving place."
  - b) "Council" means the new Delta Stewardship Council.
  - c) "Delta" means the legal Delta, Suisun Marsh and the Yolo Bypass.

- d) “Delta Plan” means the comprehensive plan described in this proposal.
  - e) “Early actions” means the actions required before completion of the Delta Plan.
  - f) “Strategic Plan” means the Delta Vision Blue Ribbon Task Force's Strategic Plan and the Delta Vision Committee's Implementation Report, with priority to the Task Force plan.
- 7) Allows the council to incorporate other completed plans related to the Delta, to the extent such plans promote the Coequal Goals.
  - 8) Makes proposal contingent upon enactment of other unspecified bills.

## ***Comments***

This proposal includes four key components for resolving the current Delta crisis and reforming Delta policy – legal framework, early actions, Delta Plan, and Bay Delta Conservation Plan. Each one of these components raises important issues for the committees’ consideration.

### A. Legal Framework

- **Coequal Goals:** This proposal includes two parts also contained in Preprint Senate Bill 1 (Simition) (PSB 1) – General Provisions and Early Actions. The one difference between these parts in the two proposals is the definition of “Coequal Goals.” This term is defined in the definitions chapter and then referenced throughout the Delta legislation, thereby avoiding defining the term differently in different parts of any of the proposals. This proposal defines that term as:

*the two goals of assuring a 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, and agricultural values of the Delta as an evolving place*

PSB 1 defines the term as:

*the goals of assuring a reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem and the unique cultural, recreational, and agricultural values of the Delta as an evolving place*

This proposal emphasizes “the two goals” of water supply reliability and ecosystem restoration, while secondarily providing for protection of the Delta “as an evolving place.” This definition is consistent with the Delta Vision Strategic Plan. In contrast, while the language in PSB 1 includes language similar to this proposal on the two goals, it also appears to elevate the objective of protecting, restoring, and enhancing the Delta “as an evolving place” to that of a third coequal goal.

*According to PAB 1's author, the PSB 1 definition merges a third concept in a way that may dilute the ecosystem goal and confuse the meaning of "co-equal goals." It appears to condition ecosystem restoration on protection of the Delta as place. Protecting agricultural values, for example, may not always be consistent with ecosystem restoration.*

The Delta Vision Strategic Plan proposed a definition very similar to that used in this PAB 1. Regarding the focus on just ecosystem restoration and water supply reliability, the Strategic Plan noted "They are co-equal because neither restoring the ecosystem nor creating a reliable water supply can be achieved without the other." However, the Strategic Plan also observed that is also necessary to "[r]ecognize 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." In other words, while ecosystem restoration and water supply reliability are the twin objectives, protecting the Delta as an evolving place is a critically necessary condition for success. Water exporters and some environmental interest groups support this approach. They assert that to elevate protecting the Delta as an evolving place to that of ecosystem restoration and water supply reliability would defuse focus on those two objectives while possibly introducing additional conflicts among the goals unnecessarily.

PSB 1 reflects the perspective that as most of the proposed actions will occur in or directly affect the Delta, and as Delta Vision recognized, protecting the Delta as an evolving place is critical to success, it makes sense to elevate protecting the Delta up front to ensure that such a critical element to success is kept front and center. Delta interests and others support this approach.

The definition of coequal goals is central to this and the other proposals in the Delta package. The definition must be the same in each of the proposals. The Conference Committee will need to reconcile these differences.

Another question is what is meant by "assuring a reliable water supply for California"? The phrase is not defined in any of the proposals in the package, and it too is central to this and the other proposals in the Delta Package. Does it mean increasing maximum diversions? Does it mean keeping maximum diversions at current levels or lower, but receiving that quantity of water more regularly than in the past? Does it mean replacing "lost" yield from other sources? There are a number of potential interpretations.

CALFED left the definition of water supply reliability undefined, and in doing so led to countless hours of fruitless debate among partisans on all sides of each potential interpretation. The Conference Committee might wish to consider defining the term to bring greater clarity to the co-equal goals.

- **Delta Policies:** This proposal adopts several new Delta policies related to both water and land, which traditionally have not been connected. These policies recognize the inherent factual connection between the two natural resources and attempt to balance the State's management and investment in both. The policies also explicitly preserve long-standing legal principles, such as "area of origin" protections for water rights. The proposal does not supersede or preempt other regulatory authorities now held by existing state agencies, such as water rights, water quality, and the California Endangered Species Act, but the Conference Committee may wish to include language more explicitly affirming this point.

## B. Early Actions

- **Instream Flow Needs:** In recent years, much of the Delta debate has centered on instream flow needs for the Delta ecosystem, particularly its fishery resources. Some of that debate arises out of the State's current policy of moving freshwater from the Sacramento River through the Delta's existing channels to the State Water Project (SWP) and the federal Central Valley Project (CVP) water export pumping facilities in the South Delta. This north-south freshwater course acts as a barrier to saltwater incursion from San Francisco Bay. In some cases, this movement causes Delta streams to flow backwards, which led to some of the recent federal court restrictions on pumping.

The State Water Resources Control Board (SWRCB) and the BDCP process have been considering this instream flow issue. BDCP also is considering changes to how SWP/CVP convey water. If BDCP ultimately concludes that a new point of diversion on the Sacramento River is necessary to meet the needs of the ecosystem, then SWP/CVP will have to get a permit to move their diversion, which would require SWRCB to impose bypass flow requirements (*i.e.*, instream flows downstream of the new point of diversion). Future decisions as to Delta water will therefore require determinations, to put it simply, of how much water the Delta needs, for ecosystem and water quality purposes. DWR currently plans to seek SWRCB permits after the BDCP is completed.

This proposal would require both interim and final determinations as to the Delta's instream water flow needs. The interim "instream flow needs determinations" (§ 85086) are explicitly intended as a planning tool as the State develops the Delta Plan and considers other changes. These determinations, in consultation with DFG, would be based on existing scientific information, not a new study of Delta needs. The proposal provides for funding of those determinations and expedited judicial review if necessary. Pursuant to the Delta Vision Strategic Plan, the proposal also requires formal instream flow determinations by 2012.

Preprint SB 1 also includes language related to instream flows. The Conference Committee may wish to consider how to make the different provisions consistent and set a realistic timeline for completion.

## C. Delta Plan

- **Statewide Water Management:** This proposal requires the Delta Plan to "promote statewide water conservation, efficiency, and sustainable use." This is consistent with the linkage drawn in the Strategic Plan between statewide water efficiency and the Delta in its Goal 4 – "Promote statewide water conservation, efficiency, and sustainable use." Another proposal in this year's package, PAB 2 (Feuer/Huffman), promotes water conservation statewide, but has not been integrated into the council. The Conference Committee may wish to consider how to better clarify the relationship between PAB 2 and statewide water management goals in the Delta Plan.



- **Bay Delta Conservation Plan – NCCP Compliance:** State and federal agencies, water contractors, and some environmentalists began developing the BDCP in 2006. They now have set an ambitious timeline to issue a draft by the end of this year and finalize the plan by next year. Members of the BDCP Steering Committee have indicated that they plan to comply with the state NCCP Act, which has a higher conservation standard than Section 10 of the federal ESA and more procedural requirements for plan development. Their planning agreement, however, explicitly provides that BDCP is not required to be an NCCP.

This proposal would require BDCP to satisfy the higher environmental standards, process requirements, and other elements necessary to qualify as an NCCP. The NCCP Act has typically been applied to terrestrial – not aquatic – ecosystems. Applying the Act to BDCP therefore may require some additional specification as to the nature of the analysis and the plan, which is why this proposal provides some of that additional specification.

- **Bay Delta Conservation Plan – Decision Process:** BDCP has developed with the support and funding from the so-called “potentially regulated entities” or “PREs.” While DWR has assumed the legal responsibility as “lead agency,” much of the development work is performed by contractors hired by the PREs. While the Steering Committee (agencies, PREs, and environmentalists) is nominally “in charge,” a separate “management committee” – which includes PRE but not environmental representatives – actually directs the consultants' work. When references are made to BDCP taking action, it is not clear who takes that action and is held accountable for the outcomes.

This proposal makes DWR responsible for all BDCP development work. The proposal also shifts authority for certifying the EIR – which usually would be the responsibility of DWR as lead agency – to the new Delta Stewardship Council. The proposal requires the council to make a decision on whether to incorporate BDCP into the larger Delta Plan, based on specified requirements. Finally, in addition to requiring compliance with NCCP requirements for independent science, the proposal specifies how the Delta Independent Science Board reviews the BDCP EIR.

According to the author, the objective of these changes is to ensure that the council – which has broader responsibilities for the Coequal Goals (not just water supply) – makes the final cut on reviewing the environmental impacts and deciding whether BDCP makes sense for the Delta as a whole. The author further states that it is important to provide a direct point of accountability for BDCP by requiring DWR – not the PREs – to prepare an EIR and propose a conservation plan to DFG. Some stakeholders have raised technical/legal concerns about having the Council, which is not acting as lead agency for BDCP, certify the EIR. Others argue that shifting the jurisdiction of this planning process mid-course and altering its goals are potential threats to its success.

The Conference Committee may wish to consider alternatives to having the Council certifying the EIR, such as allowing DWR, DFG, or some other state agency to certify the EIR while reserving final decisions regarding funding, authorization, and incorporation into the Plan – *i.e.*, determinations as to whether BDCP actually proceeds – for the Council after the EIR is certified.



### Other Issues:

As the conference committee begins deliberating this proposal, it also may want to consider technical amendments to address the following:

- process for the council to consider and adopt DPC recommendations as to the plan for protecting the Delta “as an evolving place” (this proposal has no provision for such recommendations; however, PSB 4 (Wolk) includes a provision expressly requiring DPC recommendations to be incorporated into the Plan).
- BDCP's role as only one part of the more comprehensive ecosystem restoration plan, which is intended to achieve results that meet or exceed goals in existing species recovery plans, as well as the state/federal salmon doubling goal
- conditions for SWRCB issuing a change in place of diversion for SWP/CVP
- ensuring that all appropriate ecosystem types in the Delta, in addition to estuarial systems, are addressed in the Delta plan and in the proposal.
- ensuring that the BDCP NCCP is coordinated with surrounding terrestrial NCCPs and that the NCCPs be harmonized before approval

*The Assembly Water, Parks & Wildlife Committee and the Senate Natural Resources & Water Committee collaborated in preparing this analysis.*

**PREPRINT ASSEMBLY BILL No. 1**

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**Proposed by Assembly Member Huffman**

August 4, 2009

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AB 1 2009

An act to add Division 35 (commencing with Section 85000) to the Water Code, relating to the Sacramento-San Joaquin Delta.

LEGISLATIVE COUNSEL'S DIGEST

Preprint AB 1, as proposed, Huffman. Sacramento-San Joaquin Delta: Delta Plan.

Existing law requires various state agencies to administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta. Existing law requires the Secretary of the Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill would establish the policy of the state with respect to the Delta. The bill would require the Delta Stewardship Council, created pursuant to \_\_\_\_ of the 2009–10 Regular Session of the Legislature, to assume responsibility for overseeing implementation of certain actions required to be initiated prior to the adoption of the Delta Plan, described below.

The bill would require the State Water Resources Control Board to make determinations with regard to instream flow needs for rivers and streams within and outside the Delta. The board would be required to submit those determinations to the council. The board would be required to charge the department for the costs associated with certain of these determinations.

The bill would require the council, on or before January 1, 2011, to develop, adopt, and implement a comprehensive management plan for the Delta (Delta Plan). The council would be required to develop the Delta Plan in a manner that is consistent with specified goals. The council would be required, every 5 years, to review and make any necessary revisions to the Delta Plan.

The bill would require the council to consult with other agencies with responsibilities in the Delta for the purpose of developing the Delta Plan. The bill would authorize the council to appoint other state agencies to contribute to developing portions of the Delta Plan. Various state agencies would be required to submit proposals to the council for possible incorporation into the Delta Plan.

The bill would impose requirements on the Department of Water Resources in connection with the preparation of a specified Bay Delta Conservation Plan. The council would be required to incorporate that plan into the Delta Plan if certain requirements are met.

The provisions of the bill would only become operative if \_\_\_\_ of the 2009–10 Regular Session of the Legislature are enacted and become effective on or before January 1, 2010.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

SECTION 1. Division 35 (commencing with Section 85000) is added to the Water Code, to read:

DIVISION 35. SACRAMENTO-SAN JOAQUIN DELTA  
REFORM ACT OF 2009

PART 1. GENERAL PROVISIONS

CHAPTER 1. SHORT TITLE AND LEGISLATIVE FINDINGS

85000. This division shall be known, and may be cited, as the Sacramento-San Joaquin Delta Reform Act of 2009.

85001. The Legislature finds and declares all of the following:

(a) The Sacramento-San Joaquin Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable. Protecting the public trust and

1 improving the stewardship of these precious resources requires  
2 fundamental reorganization of the state's management of Delta  
3 watershed resources.

4 (b) In response to the Delta crisis, the Legislature and the  
5 Governor required development of a new long-term strategic vision  
6 for managing the Delta. The Governor appointed a Blue Ribbon  
7 Task Force to recommend a new "Delta Vision Strategic Plan" to  
8 his cabinet committee, which, in turn, made recommendations for  
9 a Delta Vision to the Governor and the Legislature on January 3,  
10 2009.

11 (c) By enacting this division, it is the intent of the Legislature  
12 to facilitate the implementation of a program for the sustainable  
13 management of the Sacramento-San Joaquin Delta ecosystem and  
14 to establish a governance structure that will direct efforts across  
15 state agencies to develop a legally enforceable California Delta  
16 Ecosystem and Water Plan.

17 85002. The Legislature finds and declares that Sacramento-San  
18 Joaquin Delta, referred to as "the Delta" in this division, is a  
19 critically important natural resource for California and the nation.  
20 It serves Californians concurrently as both the hub of the California  
21 water system and the most valuable estuary ecosystem on the west  
22 coast of North and South America.

23 85003. The Legislature finds and declares all of the following:

24 (a) Originally, the Delta was a shallow wetland with water  
25 covering the area for many months of the year. Natural levees,  
26 created by deposits of sediment, allowed some islands to emerge  
27 during the dry summer months. Salinity would fluctuate, depending  
28 on the season and the amount of precipitation in any one year, and  
29 the species that comprised the Delta ecosystem had evolved and  
30 adapted to this unique, dynamic system.

31 (b) Delta property ownership developed pursuant to the federal  
32 Swamp Land Act of 1850, and state legislation enacted in 1861,  
33 and as a result of the construction of levees to keep previously  
34 seasonal wetlands dry throughout the year. That property  
35 ownership, and the exercise of associated rights, continue to depend  
36 on the landowners' maintenance of those privately owned levees  
37 and do not include any right to state funding of levee maintenance  
38 or repair.

39 (c) In 1933, the Legislature approved the California Central  
40 Valley Project Act, which relied upon the transfer of Sacramento

1 River water south through the Delta and maintenance of a more  
2 constant salinity regime by using upstream reservoir releases of  
3 freshwater to create a hydraulic salinity barrier. As a result of the  
4 operations of state and federal water projects, the natural salinity  
5 variations in the Delta have been altered. Restoring a healthy  
6 estuarine ecosystem in the Delta may require developing a more  
7 natural salinity regime in parts of the Delta.

8  
9 CHAPTER 2. DELTA POLICY

10  
11 85020. (a) The coequal goals shall be the standard for  
12 long-term management of Delta water and environmental resources.

13 (b) The policy of the State of California is to achieve the  
14 following objectives that the Legislature declares are inherent in  
15 the coequal goals for management of the Delta:

16 (1) Manage the Delta's water and environmental resources over  
17 the long-term to achieve the coequal goals.

18 (2) Protect and enhance the unique cultural, recreational, and  
19 agricultural values of the California Delta as an evolving place.

20 (3) Restore the Delta ecosystem, including its fisheries, as the  
21 heart of a healthy estuary.

22 (4) Promote statewide water conservation, efficiency, and  
23 sustainable use.

24 (5) Achieve water quality objectives in the Delta.

25 (6) Establish an appropriate balance between water reserved for  
26 public trust and ecosystem restoration purposes and water available  
27 for allocation and appropriation for other beneficial uses.

28 (7) Improve the existing water conveyance system and expand  
29 statewide water storage.

30 (8) Reduce risks to people, property, and state interests in the  
31 Delta by effective emergency preparedness, appropriate land uses,  
32 and strategic levee investments.

33 (9) Establish a new governance structure with the authority,  
34 responsibility, accountability, scientific support, and adequate and  
35 secure funding to achieve these objectives.

36 85021. The policy of the State of California is to reduce  
37 dependence on water from the Delta watershed, over the long-term,  
38 for statewide water supply reliability. Each region that depends  
39 on water from the Delta shall improve its regional self-reliance  
40 for water through investment in water-use efficiency, water

1 recycling, advanced water technologies, local and regional water  
2 supply projects, and improved regional coordination of local and  
3 regional water supply efforts.

4 85022. (a) It is the intent of the Legislature that state and local  
5 land use actions are consistent with the Delta Plan, including the  
6 commission's resources management plan. This section's findings,  
7 policies, and goals apply to Delta land-use planning and  
8 development.

9 (b) The actions of the council shall be guided by the findings,  
10 policies, and goals expressed in this section when reviewing  
11 decisions of the commission pursuant to Division 19.5  
12 (commencing with Section 29700) of the Public Resources Code.

13 (c) The Legislature finds and declares as follows:

14 (1) That the Delta is a distinct and valuable natural resource of  
15 vital and enduring interest to all the people and exists as a delicately  
16 balanced estuary ecosystem of hemispheric importance.

17 (2) That the permanent protection of the Delta's natural and  
18 scenic resources is a paramount concern to present and future  
19 residents of the state and nation.

20 (3) That to promote the public safety, health, and welfare, and  
21 to protect public and private property, wildlife, fisheries, and the  
22 natural environment, it is necessary to protect the ecological  
23 balance of the Delta and prevent its deterioration and destruction.

24 (4) That existing developed uses, and future developments that  
25 are carefully planned and developed consistent with the policies  
26 of this division, are essential to the economic and social well-being  
27 of the people of this state and especially to working persons living  
28 and working in the Delta.

29 (d) The fundamental goals for managing land use in the Delta  
30 are to:

31 (1) Protect, maintain, and, where feasible, enhance and restore  
32 the overall quality of the Delta environment and its natural and  
33 artificial resources.

34 (2) Ensure orderly, balanced utilization and conservation of  
35 Delta resources taking into account the social and economic needs  
36 of the people of the state.

37 (3) Maximize public access to Delta resources and maximize  
38 public recreational opportunities in the Delta consistent with sound  
39 resources conservation principles and constitutionally protected  
40 rights of private property owners.

1 (4) Ensure priority for Delta-dependent and Delta-related  
2 development over other development in the Delta.

3 (5) Encourage state and local initiatives and cooperation in  
4 preparing procedures to implement coordinated planning and  
5 development for mutually beneficial uses, including educational  
6 uses, in the Delta.

7 85023. The longstanding constitutional principle of reasonable  
8 use and the public trust doctrine shall be the foundation of state  
9 water management policy and are particularly important and  
10 applicable to the Delta.

11  
12 CHAPTER 3. MISCELLANEOUS PROVISIONS  
13

14 85031. This division does not diminish, impair, or otherwise  
15 affect any area of origin, watershed of origin, county of origin, or  
16 any other water rights protections provided under the law. This  
17 division does not limit or otherwise affect the application of  
18 Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463,  
19 and Sections 12200 to 12220, inclusive.

20 85032. This division does not affect the Natural Community  
21 Conservation Planning Act (Chapter 10 (commencing with Section  
22 2800) of Division 3 of the Fish and Game Code).

23 85033. This division does not expand the liability of the state  
24 for flood protection in the Delta or its watershed.

25  
26 CHAPTER 4. DEFINITIONS  
27

28 85050. Unless the context otherwise requires, the definitions  
29 set forth in this chapter govern the construction of this division.

30 85051. "Acquisition" means the acquisition of a fee interest  
31 or any other interest, including easements, leases, and development  
32 rights.

33 85053. "Bay Delta Conservation Plan" means a natural  
34 community conservation plan that complies with the Natural  
35 Community Conservation Planning Act (Chapter 10 (commencing  
36 with Section 2800) of Division 3 of the Fish and Game Code), and  
37 that may include a habitat conservation plan that would be created  
38 pursuant to Section 10 of the federal Endangered Species Act (16  
39 U.S.C. Sec. 1531 et seq.) and accompanying regulations.



1 85054. “Coequal goals” means the two goals of assuring a  
2 reliable water supply for California and protecting, restoring, and  
3 enhancing the Delta ecosystem. The coequal goals shall be  
4 achieved in a manner that protects and enhances the unique cultural,  
5 recreational, and agricultural values of the Delta as an evolving  
6 place.

7 85055. “Commission” means the Delta Protection Commission  
8 established in Division 19.5 (commencing with Section 29700) of  
9 the Public Resources Code.

10 85056. “Conservancy” means the Sacramento-San Joaquin  
11 Delta Conservancy established in Section 32320 of the Public  
12 Resources Code.

13 85057. “Council” means the Delta Stewardship Council  
14 established in Section 85200.

15 85058. “Delta” means the Sacramento-San Joaquin Delta  
16 estuary, as defined in Section 12220, and includes the Suisun  
17 Marsh, as defined in Section 29101 of the Public Resources Code,  
18 and the Yolo Bypass.

19 85059. “Delta Plan” means the comprehensive, long-term  
20 management plan for the Delta to achieve the coequal goals as  
21 adopted by the council in accordance with this division.

22 85060. “Delta watershed” means the Sacramento River  
23 Hydrologic Region and the San Joaquin River Hydrologic Region  
24 as described in the department’s Bulletin No. 160-05.

25 85061. “Early actions” means the actions required to be  
26 initiated prior to adoption of the Delta Plan.

27 85063. “Private water agency” means a public utility as defined  
28 in Section 216 of the Public Utilities Code that provides water  
29 service as defined in Section 515 or a mutual water company as  
30 defined in Section 2725 of the Public Utilities Code.

31 85064. “Public water agency” means a public entity, as defined  
32 in Section 514, that provides water service, as defined in Section  
33 515.

34 85065. “Restoration” means the application of ecological  
35 principles to restore a degraded or fragmented ecosystem and return  
36 it to a condition in which its biological and structural components  
37 achieve a close approximation of its natural potential.

38 85066. “Strategic Plan” means both the “Delta Vision Strategic  
39 Plan” issued by the Delta Vision Blue Ribbon Task Force on  
40 October 17, 2008, and the “Delta Vision Implementation Report”



1 adopted by the Delta Vision Committee and dated December 31,  
2 2008. Where the two documents conflict, the “Delta Vision  
3 Strategic Plan” issued by the Delta Vision Blue Ribbon Task Force  
4 shall prevail.

5  
6 PART 2. EARLY ACTIONS  
7

8 85080. Upon appointment of a quorum of the council, the  
9 council shall assume responsibility for overseeing implementation  
10 of early actions, as provided in this part. The council may identify  
11 early actions in addition to those identified in this part pertaining  
12 to transportation, utilities, recreation, water supply, ecosystem  
13 improvements, and flood control.

14 85081. (a) Within 60 days of the appointment of a quorum of  
15 the council, the council shall request a list of nominees to serve  
16 on the Delta Independent Science Board from the Director of the  
17 University of California Center for Water Resources and the  
18 Director of the United States Geologic Survey office in  
19 Sacramento.

20 (b) The council shall appoint persons to serve on the Delta  
21 Independent Science Board, as established in Section 85280, within  
22 30 days of receiving the list of nominees.

23 85082. Within 120 days of the appointment of a quorum of the  
24 council, the council shall develop and implement a strategy to  
25 appropriately engage participation of the federal agencies with  
26 responsibilities in the Delta. This strategy may include developing  
27 the Delta Plan consistent with the federal Coastal Zone  
28 Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the federal  
29 Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and Section 8 of  
30 the federal Reclamation Act of 1902.

31 85083. Within 120 days of the appointment of a quorum of the  
32 council, the council shall begin developing information necessary  
33 to develop the Delta Plan in accordance with this division,  
34 including, but not limited to, all of the following:

35 (a) A list of all applicable legal requirements, including  
36 requirements relating to federal and state endangered species laws  
37 that pertain to the Delta.

38 (b) Determination of the relevance of other federal, state, and  
39 local plans to the development of the Delta Plan.

1 85084. The council shall develop an interim plan that includes  
2 recommendations for early actions, projects, and programs  
3 including, but not limited to, the following:

4 (a) Develop and implement an interim finance strategy for  
5 developing the Delta Plan and taking the early actions described  
6 in this part.

7 (b) Commence study of the transfer of the State Water Project  
8 to a separate public agency or utility.

9 (c) Designate the department and the Department of Fish and  
10 Game to implement near-term restoration projects, including, but  
11 not limited to, Dutch Slough tidal marsh restoration, Meins Island  
12 tidal marsh restoration, and floodplain improvements in the Yolo  
13 Bypass.

14 (d) Direct the Department of Fish and Game, consistent with  
15 the board's determinations of instream flow needs in the Delta  
16 pursuant to Section 85086, to submit information and any  
17 recommendations as to the Delta's instream flow needs to the  
18 board by April 1, 2010. The information shall include only  
19 information in its possession that the Department of Fish and Game  
20 deems reliable.

21 85085. The department shall do all of the following:

22 (a) Conduct a study of the Middle River Corridor Two-Barrier  
23 pilot project.

24 (b) Evaluate the effectiveness of the Three Mile Slough Barrier  
25 project.

26 (c) Construct demonstration fish protection screens at Clifton  
27 Court Forebay.

28 (d) Assist the Department of Fish and Game in implementing  
29 early action ecosystem restoration projects, including, but not  
30 limited to, Dutch Slough tidal marsh restoration, Meins Island tidal  
31 marsh restoration, and floodplain improvements in the Yolo  
32 Bypass.

33 85086. (a) The board shall establish an effective system of  
34 Delta watershed diversion data collection and public reporting by  
35 December 31, 2010.

36 (b) It is the intent of the Legislature to establish an accelerated  
37 process, that is distinct from the imposition of minimum instream  
38 flow requirements pursuant to Section 1257.5, to determine  
39 instream flow needs of the Delta and its tributaries. It is the further  
40 intent of the Legislature that this accelerated process will facilitate

1 the planning decisions that are required to achieve the objectives  
2 of the Delta Plan and the coequal goals. These determinations do  
3 not affect the statutory rights of any party to adjudicate statutory  
4 instream flow requirements.

5 (c) (1) The board, in consultation with the Department of Fish  
6 and Game and by June 30, 2010, shall complete an analysis of the  
7 best available scientific information in existence as of the date of  
8 enactment of this division and determine the instream flow needs  
9 in the Delta, from the Sacramento River watershed, for ecosystem  
10 and water quality purposes.

11 (2) The board may not grant any petition to change a point of  
12 diversion in the Delta that is submitted by the department on behalf  
13 of the State Water Project or by the United States Bureau of  
14 Reclamation on behalf of the federal Central Valley Project before  
15 the board makes its determination pursuant to paragraph (1).

16 (d) (1) The board shall charge the department for the costs of  
17 this analysis and determination pursuant to the board's authority  
18 to regulate the water rights of the State Water Project and the  
19 federal Central Valley Project.

20 (2) The department shall obtain reimbursement for those charges  
21 from the State Water Project contractors, pursuant to the existing  
22 State Water Project contracts, and may use funding made available  
23 pursuant to the Financial Assistance Agreement for the Delta  
24 Habitat Conservation and Conveyance Program, as executed by  
25 the United States Bureau of Reclamation on March 13, 2009.

26 (e) The board, by December 31, 2010, shall submit a prioritized  
27 schedule to complete determinations as to instream flow needs for  
28 the Delta and for high priority rivers and streams in the Delta  
29 watershed, not otherwise described in subdivision (c), by 2012,  
30 and for all major rivers and streams outside the Delta by 2018. In  
31 developing this schedule, the board shall consult with the  
32 Department of Fish and Game as to the timing of its submission  
33 of recommendations for instream flow needs.

34 (f) The board shall submit its instream flow need determinations  
35 pursuant to this section to the council within 30 days of final  
36 adoption.

37 (g) The instream flow need determinations required by this  
38 section shall be subject to judicial review only in the Court of  
39 Appeals for the Third District, and that court may designate a  
40 special master or an administrative law judge for the purpose of

1 assisting the court. The Court of Appeals review shall be based on  
2 the board's administrative record. The judicial standard of review  
3 shall be whether the board's determinations as to necessary  
4 instream flows were arbitrary and capricious.

5  
6 PART 4. COMPREHENSIVE DELTA PLANNING

7  
8 CHAPTER 1. THE DELTA PLAN  
9

10 85300. (a) The council, by no later than January 1, 2011, shall  
11 develop, adopt, and implement a comprehensive Delta Plan  
12 pursuant to this part that is consistent with the coequal goals. The  
13 Delta Plan shall identify specific actions by state agencies, which  
14 shall be required to implement those identified actions. Unless  
15 otherwise specified, the Delta Plan shall incorporate the strategies  
16 described in the Strategic Plan and the council shall consider the  
17 actions in the Strategic Plan in the development of the Delta Plan.

18 (b) In developing the Delta Plan, the council shall consult with  
19 federal, state, and local agencies with responsibilities in the Delta.  
20 The council may appoint specific state agencies to contribute to  
21 developing portions of the Delta Plan, and may incorporate any  
22 state agency proposals into the Delta Plan, as the council deems  
23 appropriate. All state agencies with responsibilities in the Delta  
24 shall cooperate with the council in developing the Delta Plan, if  
25 the council so requests.

26 (c) In developing the Delta Plan, the council shall develop the  
27 Delta Plan consistent with the provisions of the federal Coastal  
28 Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.),  
29 Section 8 of the federal Reclamation Act of 1902, and the federal  
30 Clean Water Act (33 U.S.C. Sec. 1251 et seq.). If the council adopts  
31 a Delta Plan consistent with the federal Coastal Zone Management  
32 Act of 1972, it shall submit the Delta Plan for approval to the  
33 United States Secretary of Commerce pursuant to that act, or to  
34 any other federal official assigned responsibility for the Delta  
35 pursuant to a federal statute enacted after January 1, 2010.

36 (d) The council may review and revise the Delta Plan at times  
37 that it deems appropriate and shall complete a review and make  
38 any necessary revisions to the Delta Plan by January 1 of each  
39 year ending in 1 or 6. The council may request any state agency

1 with responsibilities in the Delta to contribute to the revisions to  
2 any part of the Delta Plan.

3 (e) The council shall report to the Legislature no later than  
4 March 31, 2012, as to its adoption of the Delta Plan.

5 85301. (a) The commission shall develop, for consideration  
6 and incorporation into the Delta Plan by the council, a proposal to  
7 protect, enhance, and sustain the unique and enduring cultural,  
8 historical, recreational, agricultural, and economic values of the  
9 Delta as an evolving ecosystem. For the purpose of carrying out  
10 this subdivision, the commission shall incorporate into the proposal  
11 the relevant strategies described in, and consider the actions  
12 recommended by, the Strategic Plan.

13 (b) (1) The commission shall include in the proposal a plan to  
14 establish state and federal designation of the Delta as a place of  
15 special significance, which may include application for a federal  
16 designation of the Delta as a National Heritage Area.

17 (2) The commission shall include in the proposal a regional  
18 economic plan, for submission to the council, to support increased  
19 investment in agriculture, recreation, tourism, and other resilient  
20 land uses in the Delta. The regional economic plan shall include  
21 detailed recommendations for the administration of the Delta  
22 Investment Fund created in Section 29778.5 of the Public  
23 Resources Code.

24 (c) For the purposes of assisting the commission in its  
25 preparation of the proposal, both of the following actions shall be  
26 undertaken:

27 (1) The Department of Parks and Recreation shall prepare a  
28 proposal, for submission to the commission, to expand within the  
29 Delta the network of state recreation areas, combining existing  
30 and newly designated areas. The proposal may incorporate  
31 appropriate aspects of any existing plans, including the Central  
32 Valley Vision Implementation Plan adopted by the Department of  
33 Parks and Recreation.

34 (2) The Department of Food and Agriculture shall prepare a  
35 proposal, for submission to the commission, to establish market  
36 incentives and infrastructure to protect, refocus, and enhance the  
37 economic and public values of Delta agriculture.

38 (d) The commission shall submit the proposal developed  
39 pursuant to subdivision (a) to the council, and the council may  
40 approve and incorporate the proposal into the Delta Plan.

1 85302. (a) The Delta Plan, upon implementation, shall achieve  
2 the restoration of the Delta ecosystem. The restoration shall require  
3 actions on the part of the state, local agencies, and special districts  
4 in addition to their mitigation duties for projects in the Delta that  
5 are intended to contribute to achieving the coequal goals.

6 (b) The geographic scope of the ecosystem restoration projects  
7 and programs identified in the Delta Plan shall extend to the first  
8 dams on the tributaries of the Delta. The council may include an  
9 ecosystem project above those dams, if it determines that the  
10 project would contribute significantly to the restoration of the Delta  
11 estuary ecosystem.

12 (c) The Delta Plan shall promote the following characteristics  
13 of a healthy Delta estuary ecosystem:

14 (1) Viable populations of native resident and migratory species.

15 (2) Functional corridors for migratory species.

16 (3) Diverse and biologically appropriate habitats and ecosystem  
17 processes.

18 (4) Waterflows to support habitats and processes.

19 (5) Significantly reduced threats and stresses on the  
20 environment.

21 (d) (1) The Delta Plan shall include the following strategies for  
22 restoring a healthy estuary ecosystem.

23 (A) Restore large areas of interconnected habitats within the  
24 Delta and its watershed by 2100.

25 (B) Establish migratory corridors for fish, birds, and other  
26 animals along selected Delta river channels.

27 (C) Promote viable, diverse populations of native and valued  
28 species by reducing the risk of fish kills and the harm from invasive  
29 species.

30 (D) Restore Delta flows and channels to support a healthy Delta  
31 estuary.

32 (E) Improve water quality to meet drinking water, agriculture,  
33 and ecosystem long-term goals.

34 (2) The council shall consider the incorporation into the Delta  
35 Plan of actions designed to implement the strategies described in  
36 paragraph (1), as described in the Strategic Plan.

37 (e) In carrying out this section, the council shall make use of  
38 the best available science.

39 (f) The council shall review, in consultation with the  
40 commission, and report to the Legislature, by December 31, 2011,



1 regarding state agency management of lands in the Delta, including  
2 any recommendations to improve land acquisition and management  
3 activities of the conservancy.

4 85303. The Delta Plan shall promote statewide water  
5 conservation, efficiency, and sustainable use, through incorporation  
6 of relevant strategies and consistent with relevant actions described  
7 in the Strategic Plan. The council shall develop, and submit to the  
8 Legislature, its recommendations for legislation that is necessary  
9 to implement those actions.

10 85304. (a) The Delta Plan shall address the Delta's needs for  
11 expanding options for water conveyance, water storage, and  
12 improved reservoir operations to achieve the coequal goals.

13 (b) The department, in consultation with the United States Army  
14 Corps of Engineers, shall prepare a proposal to integrate flood and  
15 water supply operations of the State Water Project and the federal  
16 Central Valley Project, and submit the proposal to the council for  
17 consideration and incorporation into the Delta Plan. In drafting  
18 the proposal, the department shall consider all related actions set  
19 forth in the Strategic Plan.

20 85305. (a) The Delta Plan shall attempt to reduce risks to  
21 people, property, and state interests in the Delta by promoting  
22 effective emergency preparedness, appropriate land uses, and  
23 strategic levee investments.

24 (b) The council shall incorporate into the Delta Plan the work  
25 of the California Emergency Management Agency with regard to  
26 its preparation of a proposed emergency preparedness and response  
27 strategy for the Delta pursuant to Section 12994.5.

28 (c) The council shall establish priorities in the Delta Plan for  
29 state investments in levee operation, maintenance, and  
30 improvements in the Delta, including both levees that are a part  
31 of the State Plan of Flood Control and privately owned levees. The  
32 priorities shall govern the expenditure of state funds for Delta  
33 projects or programs authorized pursuant to Chapter 2  
34 (commencing with Section 12310) of Part 4.8 of, and Part 9  
35 (commencing with Section 12980) of, Division 6. The council  
36 shall oversee the implementation of the priorities established  
37 pursuant to this subdivision.

38 (d) The Delta Plan may identify actions to be taken outside the  
39 Delta, where those actions are determined to significantly reduce  
40 flood risks in the Delta.

1 (e) The council may consider local plans of flood protection for  
2 incorporation into the Delta Plan.

3 (f) The council, in consultation with the Department of  
4 Transportation, shall address the effects of climate change and sea  
5 level rise on the three state highways that cross the Delta in the  
6 Delta Plan.

7 (g) The council, in consultation with the State Energy Resources  
8 Conservation and Development Commission and the Public  
9 Utilities Commission, shall incorporate into the Delta Plan  
10 additional actions to address the needs of Delta energy  
11 development, energy storage, and energy distribution.

12 85306. (a) The Delta Plan shall meet all of the following  
13 requirements:

14 (1) Be based on the best available scientific information and  
15 the independent science advice provided by the Delta Independent  
16 Science Board.

17 (2) Include quantified or otherwise measurable targets associated  
18 with achieving the coequal goals.

19 (3) Provide for monitoring, data collection, and analysis of  
20 actions sufficient to determine progress toward meeting the  
21 quantified targets and the coequal goals.

22 (4) Integrate scientific and monitoring results into ongoing Delta  
23 water management.

24 (5) Include a science-based, transparent, and formal adaptive  
25 management strategy for ongoing ecosystem restoration and water  
26 management decisions.

27 (6) The adaptive management strategy shall accomplish all of  
28 the following:

29 (A) Reflect and synthesize existing knowledge about the Delta  
30 as a physical system.

31 (B) Describe the expectations or hypotheses about the effects  
32 of management actions included in the Delta Plan on the  
33 ecosystem, water supply, and other values.

34 (C) Recommend additional management actions expected to  
35 contribute to ecosystem or water supply and reliability  
36 improvements or are designed to contribute to a greater  
37 understanding of the Delta and its ecosystem.

38 (D) Identify and establish, under the review of the Delta  
39 Independent Science Board, the processes by which the data will  
40 be synthesized, hypotheses evaluated, and new management actions



1 that are recommended by the council, using the adaptive  
2 management program contained in the Bay Delta Conservation  
3 Plan and the Delta Plan.

4 (b) The council shall develop a procedure and process for  
5 revising the ecosystem restoration and water management actions  
6 in the Delta Plan as necessary to meet the requirements of  
7 subdivision (a).

8  
9 CHAPTER 2. BAY DELTA CONSERVATION PLAN

10  
11 85320. (a) The Legislature finds and declares that federal,  
12 state, and local agencies, as well as special districts and interested  
13 stakeholders, have initiated development of the Bay Delta  
14 Conservation Plan, which will make recommendations for habitat  
15 management, water supply reliability, and important regional  
16 conservation objectives. The Natural Resources Agency has  
17 provided the leadership for this initiative.

18 (b) The department shall propose, in conjunction with other  
19 federal, state, and local agencies, a conservation plan to the  
20 Department of Fish and Game that complies with the Natural  
21 Community Conservation Planning Act (Chapter 10 (commencing  
22 with Section 2800) of Division 3 of the Fish and Game Code).

23 (c) It is the intent of the Legislature that the Bay Delta  
24 Conservation Plan, with the agreement and participation of  
25 appropriate federal agencies, may also be developed as a habitat  
26 conservation plan for the purposes of Section 10 of the federal  
27 Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).

28 (d) To the maximum extent practicable, the department shall  
29 consult with the council during the development of the Bay Delta  
30 Conservation Plan.

31 (e) If the Bay Delta Conservation Plan complies with the Natural  
32 Community Conservation Planning Act, the Department of Fish  
33 and Game shall approve the Bay Delta Conservation Plan pursuant  
34 to the Natural Community Conservation Planning Act.

35 (f) The department shall prepare an environmental impact report  
36 for the Bay Delta Conservation Plan pursuant to the California  
37 Environmental Quality Act.

38 (g) The department shall inform the council that the department  
39 has completed all the actions necessary for the certification of the  
40 final environmental impact report. Notwithstanding Sections 15051

1 and 15090 of Title 14 of the California Code of Regulations, the  
2 council has exclusive authority to certify the final environmental  
3 impact report.

4 (h) The final environmental impact report shall be submitted to  
5 the Delta Independent Science Board for its review, and its findings  
6 shall be submitted to the council within 60 days of receipt.

7 (i) The council shall review and comment on the findings of the  
8 Delta Independent Science Board in a public hearing prior to  
9 certifying of the final environmental impact report.

10 (j) The council shall incorporate the Bay Delta Conservation  
11 Plan into the Delta Plan, if it determines in writing, based on best  
12 available science, and after holding at least one public hearing,  
13 that all of the following apply:

14 (1) The Bay Delta Conservation Plan and the final environmental  
15 impact report, are based on the best available scientific information,  
16 and contain a comprehensive investigation and analysis of all of  
17 the following:

18 (A) The volume, quality, and timing of water required for a  
19 healthy Delta estuarine ecosystem under different conditions  
20 including seasonal, annual, and interannual bases, and including  
21 an assessment of increased spring and fall outflow and increased  
22 San Joaquin River inflow.

23 (B) A full range of Delta conveyance alternatives including  
24 through-Delta dual conveyance and isolated conveyance  
25 alternatives. This analysis shall be in consultation with the  
26 Department of Fish and Game, and shall fully consider the impact  
27 these options have on in-Delta, Sacramento River, and estuarine  
28 ecological processes and functions, including the assessment of  
29 increased spring and fall outflow, and increased San Joaquin River  
30 inflow.

31 (C) The alternatives described in subparagraph (B) that also  
32 considers capacity and design options of a lined canal, an unlined  
33 canal, and pipelines.

34 (D) The potential effects of climate change, possible sea level  
35 rise of at least 55 inches, and possible changes in total precipitation  
36 and runoff patterns on the conveyance alternatives and habitat  
37 restoration activities considered in the environmental impact report.

38 (E) Potential impacts on migratory fish and aquatic resources,  
39 at both the population and ecosystem levels, upstream of the Delta.

1 The Bay Delta Conservation Plan shall design monitoring programs  
2 to systematically gather needed data.

3 (F) Potential impacts resulting from implementation of the Bay  
4 Delta Conservation Plan on Sacramento River and San Joaquin  
5 River flood management.

6 (G) Alternatives described in subparagraph (B) for resilience  
7 and recovery in the event of catastrophic loss caused by earthquake  
8 or flood or other natural disaster. This evaluation shall include an  
9 analysis of the conveyance options based on a common level of  
10 seismic and flood durability.

11 (H) The probability of achieving current Delta water quality for  
12 each of the conveyance alternatives.

13 (2) The Bay Delta Conservation Plan includes the following  
14 elements:

15 (A) An objective that the fisheries management activities  
16 described in the Bay Delta Conservation Plan will achieve results  
17 that meet or exceed the goals in existing species recovery plans  
18 and the state and federal salmon doubling goal.

19 (B) A science-based and formal adaptive management program  
20 developed in compliance with the adaptive management  
21 requirements of the Natural Community Conservation Planning  
22 Act (Chapter 10 (commencing with Section 2800) of Division 3  
23 of the Fish and Game Code) and the Delta Plan that is reviewed  
24 by the Delta Independent Science Board and that integrates  
25 scientific and monitoring results into ongoing Delta water  
26 management. The adaptive management strategy that is contained  
27 in the Bay Delta Conservation Plan or the final environmental  
28 impact report meet all of the following requirements:

29 (i) Reflects and synthesizes existing knowledge about the Delta  
30 as a physical system.

31 (ii) Describes expectations or hypotheses about the effects of  
32 management actions included in the Delta Plan on the ecosystem,  
33 water supply, and other values.

34 (iii) Recommends additional management actions expected to  
35 contribute to ecosystem or water supply and reliability  
36 improvements or are designed to contribute to greater  
37 understanding of the Delta and its ecosystem.

38 (iv) Identifies and establishes, with review of the Delta  
39 Independent Science Board, the processes by which the data will  
40 be synthesized, hypotheses evaluated, and new management actions

1 that are recommended by the council, using the adaptive  
2 management program contained in the Bay Delta Conservation  
3 Plan and the Delta Plan.

4 85321. The council and the Delta Independent Science Board  
5 shall evaluate annually the Bay Delta Conservation Plan, if it is  
6 adopted, with regard to the achievement of its objectives. The  
7 council shall submit each evaluation to the Legislature and the  
8 Bay Delta Conservation Plan permitting agencies.

9 85322. Nothing in this chapter amends or otherwise affects the  
10 Natural Community Conservation Planning Act (Chapter 10  
11 (commencing with Section 2800) of Division 3 of the Fish and  
12 Game Code).

13  
14 CHAPTER 3. OTHER PLANS FOR THE DELTA  
15

16 85350. The council may incorporate other completed plans  
17 related to the Delta into the Delta Plan to the extent that the other  
18 plans promote the coequal goals.

19 SEC. 2. This act shall only become operative if \_\_\_\_ of the  
20 2009–10 Regular Session of the Legislature are enacted and  
21 become effective on or before January 1, 2010.

# Preprint SB 1 (SB 12 content) by Senator Simitian

## Summary and Comments

**Summary:** Preprint Senate Bill No. 1 (PSB 1) would establish the Delta Stewardship Council to advance the *coequal* goals of assuring a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem and enhancing the unique cultural, recreational, and agricultural values of the Delta as an evolving place.

Specifically, this proposal would enact the Sacramento-San Joaquin Delta Reform Act of 2009. This Act would:

- 1) Establish State policies for the Delta, including:
  - a) Setting the *coequal goals* of “assuring a reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem and the unique cultural, recreational, and agricultural values of the Delta as an evolving place” as the standard for long-term management of Delta water and environmental resources.
  - b) Setting the policy to reduce dependence on water from the Delta watershed, over the long-term, for statewide water supply reliability.
  - c) Restating – but not changing – the longstanding constitutional principle of reasonable use and the public trust doctrine as the foundation of state water management policy and as particularly important and applicable to the Delta.
- 2) Create the Delta Stewardship Council:
  - a) The Council would consist of 7 members:
    - i) 4 members appointed by the Governor and confirmed by the Senate
    - ii) 1 member appointed by the Senate Committee on Rules
    - iii) 1 member appointed by the Speaker of the Assembly
    - iv) The Chairperson of the Delta Protection Commission
  - b) Council members would be required to possess diverse expertise and reflect a statewide perspective.
  - c) The initial term of office of each member of the Council would be two, four, or six years and all subsequent terms shall be eight years.
  - d) The chairperson would serve full time. Other members would serve one-third time.
  - e) The Council would meet once a month in a public forum. At least two meetings each year would be required to take place at a location within the Delta.
- 3) Provide the Council standard administrative powers, including the power to sue or be sued, enter into contracts, employ the services of public, nonprofit, and private entities, etc.

4) Establish requirements for consistency with a Delta Plan

- a) The Council, by regulation, would be required to adopt a consultation process, that includes remedies, with all state agencies, departments, boards, and commissions that have specified responsibilities to develop, implement, monitor, and adhere to all or part of the Delta Plan.
- b) The Council would be required to identify those state agency plans that should be reviewed by the Council, and if necessary amended to be consistent with Delta Plan.
- c) The Council would be required to act on proposed state agency plan or plan amendments within 60 days from the date of submittal of the proposed plan or plan amendments.
- d) Proposal states that nothing in these requirements affect the authority of the Department of Fish and Game (DFG) or the State Water Resources Control Board (SWRCB).

5) Establish process to authorize Delta water conveyance

- a) Council would be required to authorize any water conveyance facility proposed to be constructed within or around the Delta consistent with Council's obligation to comprehensively address the coequal goals.
- b) Before taking any action to authorize the construction of any water conveyance facility within or around the Delta, the Council would be required to make the following determinations:
  - i) SWRCB has adopted instream flow determinations for the Sacramento River and waterways within the Delta that provide the volume, quality, and timing of water required for a healthy Delta ecosystem under different conditions, including seasonal, annual, and interannual bases, and including an assessment of increased spring and fall outflow and increased San Joaquin River inflow.
  - ii) Each water agency that relies on water exports from the Delta watershed has submitted to the Council a contingency plan for Delta water supply curtailments and drought, consistent with SWRCB's instream flow requirements, and a long-term plan for reducing reliance on those exports.
  - iii) The proposed water conveyance facility will be operated in a manner consistent with achieving the coequal goals.

6) Establish a Delta Water Master

- a) SWRCB would be required to appoint a special master for the Delta, whose title shall be "the Delta Watermaster."
- b) Council would be required to submit to SWRCB a list of at least one candidate to serve as Delta Watermaster. The Council would be required to recommend individuals who have extensive knowledge and experience in one or more of the following areas:
  - i) Water rights laws or water rights enforcement.
  - ii) Water quality laws or water quality enforcement.
  - iii) State Water Project (SWP) or federal Central Valley Project (CVP) operations.
  - iv) State or federal endangered species laws or endangered species enforcement.

- c) SWRCB would be required to select one individual from the list provided by the Council to act as the Delta Watermaster, within 60 days of receipt of the list. If SWRCB found that none of the candidates met the requirements under this proposal, SWRCB would be required to notify the Council of that finding and that a vacancy exists.
- d) The Delta Watermaster would be an agent of SWRCB, and would be vested with all of the statutory enforcement authority granted to SWRCB as to daily operations of all surface water diversions within the Delta watershed.
- e) The Delta Watermaster's authority would include, but not be limited to, the duty to:
  - i) Enforce water rights for diversions.
  - ii) Exercise the state's public trust responsibilities.
  - iii) Enforce the California Endangered Species Act as to diversions.
  - iv) Make judgments as to reasonable use pursuant to the California Constitution.
  - v) Enforce water quality objectives established in the Delta Water Quality Control Plan.
  - vi) Consider and decide on petitions for changes – with a duration of 90 days or less – in water right permits or licenses for diversions within the Delta watershed.
- f) SWRCB would be required to amend terms and conditions of water right permits or licenses for diversions within the Delta watershed to delegate authority to the Delta Watermaster to act on SWRCB's behalf.
- g) Delta Watermaster decisions could be appealed to an administrative law judge, which would be appointed by SWRCB to consider such appeals.

7) Establish a Delta Independent Science Board

- a) The Delta Independent Science Board (Science Board) would have no more than 11 members, and could include employed or retired scientists from federal and state agencies not having major project or regulatory authority over the Delta, the University of California, the California State University, and nongovernmental organizations.
- b) Science Board would be required to develop a scientific program which would include:
  - i) Research critical scientific issues of both the physical Delta and elsewhere in the state relevant to Delta management.
  - ii) Organize, assess, and synthesize best available science for policymakers and Council.
  - iii) Review major projects undertaken to advance the goals of Delta Vision, upon request of other specified agencies, including the Council.
- c) Conduct independent science and engineering reviews of work of government agencies or consultants upon request of the Council or other state agencies.
- d) Science Board would be required to prepare an annual report for submission to the Council on scientific issues related to the Delta. The report would include scientific and technical findings regarding the management of the Delta and recommended actions of the Council, an identification of short-term and long-term matters for research, and a description of the relevance of these matters to achieving the coequal goals.



## 8) Direct Early Actions In The Delta

- a) Upon appointment of a quorum, Council would assume responsibility for overseeing implementation of early actions, with authority to identify early actions in addition to those specifically identified in this proposal pertaining to transportation, utilities, recreation, water supply, ecosystem improvements, and flood control.
- b) Within 60 days of appointment of a quorum, Council would be required to request a list of nominees to serve on Science Board from University of California, U.S. Geological Survey, and appoint Science Board within 30 days of receiving the list.
- c) Within 120 days of appointment of a quorum, Council would be required to
  - i) Develop and implement strategy to appropriately engage federal agencies with responsibilities in the Delta.
  - ii) Begin developing information necessary to develop the Delta Plan.
- d) Council would be required to develop an interim plan of recommendations for early actions, projects, including:
  - i) interim finance strategy for developing Delta Plan and taking early actions
  - ii) study of transfer of SWP to a separate public agency or utility
  - iii) designation of Department of Water Resources (DWR) and DFG to implement near-term restoration projects, including Dutch Slough tidal marsh restoration, Meins Island tidal marsh restoration, and floodplain improvements in the Yolo Bypass
  - iv) direction to DFG to submit recommendations as to the Delta's instream flow needs to SWRCB by April 1, 2010, based on existing information that DFG deems reliable
- e) DWR would be required to do all of the following:
  - i) Conduct a study of the Middle River Corridor Two-Barrier pilot project.
  - ii) Evaluate the effectiveness of the Three Mile Slough Barrier project.
  - iii) Construct demonstration fish protection screens at Clifton Court Forebay.
  - iv) Assist DFG in implementing early action ecosystem restoration projects.
- f) SWRCB would be required to establish effective system of Delta watershed diversion data collection and reporting, and determine Delta's instream flow needs, as follows:
  - i) States legislative intent for accelerated process to facilitate Delta planning decisions
  - ii) Requires SWRCB to make determinations, in consultation with the DFG, by June 30, 2010, for ecosystem and water quality purposes.
  - iii) Prohibits granting of any petition to change a point of diversion in the Delta for SWP or CVP until instream flow needs are determined.
  - iv) Requires SWRCB to charge DWR for the costs of this analysis and determination.
  - v) Requires DWR to obtain reimbursement for those charges from the State Water Project contractors and federal government.
  - vi) Requires SWRCB to give Council instream flow need determinations within 30 days.
  - vii) Limits judicial review of determinations to review by Court of Appeals, based on SWRCB record and the "arbitrary and capricious" standard.
- g) SWRCB, by December 31, 2010, would be required to submit prioritized schedule to complete instream flow need determinations as to Delta and high priority rivers in Delta watershed by 2012, and for all major rivers/streams outside Delta by 2018.



9) Establish a Delta finance structure

- a) Delta Plan would be required to apply “beneficiaries pay” principles.
- b) Council would be required to develop and adopt a multi-year estimate covering an unspecified period, in annual increments, of all federal and state funds reasonably expected to be available during that unspecified period to implement the Delta Plan.
- c) Council would be required to develop finance plan that ensures necessary funding to fulfill goals of the Delta Plan and to mitigate the impacts of implementing the Delta Plan.
- d) State Water Project contractors and federal Central Valley Project contractors would be required to pay the entire costs of the following actions and projects:
  - i) Environmental review, planning, design, construction, and operation of any new Delta water conveyance facility
  - ii) Necessary mitigation to reduce environmental damage caused by water export operations and to produce higher quality water for purposes of export
- e) Council would be required to impose an annual fee on each person or entity that holds a right, permit, or license to divert water within the watershed of the San Francisco Bay/Sacramento-San Joaquin Delta. Fee would apply to all holders of water rights.
- f) Until December 31, 2012, the Council would establish fees, by emergency regulation, to provide only for funding necessary to complete the Delta Plan, establish the Council, and implement the early actions.
- g) Beginning January 1, 2013, Council would, by regulation, set the fee schedule so that the total revenue collected from fees equals the appropriate proposed annual budget; or, total revenue equals amount needed in the Council’s judgment to pay for both:
  - i) Costs of facilities and program activities intended to mitigate damage to fish populations and other natural resources in the Delta and its tributaries reasonably related to the diversion of water and other activities of the holder of water rights.
  - ii) Costs of Council activities financed pursuant to this part, including all costs incurred to establish, administer, defend or collect the authorized fee.
- h) Council would set fee schedule to bear a fair and reasonable relationship to those charges.
- i) Council would review the fees each fiscal year and revise as necessary.
- j) Council would be authorized to issue revenue bonds

10) Provide for other miscellaneous issues

- a) Proposal includes numerous “savings” clauses, including "area of origin," Natural Community Conservation Planning Act, state liability for flood protection.
- b) Proposal includes legislative findings regarding history and importance of the Delta

## Comments

*NOTE: While this proposal raises a number of issues associated with co-equal goals, early actions, instream flow determinations and Bay-Delta Conservation Plan requirements and approvals, these issues are largely the same as those raised in Preprint Assembly Bill 1 (PAB 1). Consequently, such issues are addressed in the Summary and Comments on PAB 1.*

### A. Governance: Council Structure & Authority

- **Council Membership:** This proposal would form a 7 member Council. Council members would be required to possess diverse expertise and reflect a statewide perspective. However, this proposal would also designate the chair of the Delta Protection Commission as a member of the Council *ex officio*.

Delta Vision suggested the Council should have no slots set aside for persons with specific characteristics. Others suggest that there must be specific slots for persons with specific characteristics, such as, representing Delta interests, environmental interests, exporter interest, etc. This proposal appears to be a hybrid of the two approaches, with membership appointed as follows:

- 4 members appointed by the Governor and confirmed by the Senate,
- 1 member appointed by the Senate Committee on Rules,
- 1 member appointed by the Speaker of the Assembly, and
- The Chairperson of the Delta Protection Commission.

Delta Vision suggested the Council should all be appointed by the Governor, subject to Senate confirmation, with no *ex officio* members. That approach would rely solely on the Senate confirmation process to ensure the Governor's appointments fairly balanced state and local interests. This proposal provides the Senate and Assembly an additional method to ensure balance, at least from the Senate and Assembly's perspectives, by allowing each to appoint a member to the Council.

- **DPC Chair:** This proposal would designate the chair of the Delta Protection Commission as a member of the Council *ex officio*. However, another preprint in this package, Preprint Senate Bill 4 (PSB 4), gives the Delta Protection Commission specific responsibilities for making recommendations to the Council for inclusion in the Delta Plan. The Council would then be required to review the recommendations for consistency with the Delta Plan, and if it found consistency, the recommendations would be required to be included. There are other provisions as well where the Delta Protection Commission is required to make findings or recommendations, with Council review for consistency.

The question arises as to whether a conflict would arise when the Chair of the Delta Protection Commission, as a member of the Council, would be required to review the actions of the Delta Protection Commission. It is difficult to imagine a situation where the Chair of the Delta Protection Commission, as a member of the Council, would find against a finding of the Delta Protection Commission. The Conference Committee may wish to review and consider resolving such a conflict.

- **Staggered Terms:** This proposal would stagger the initial terms, but the subsequent terms would be for 8 years. Some have suggested that a shorter term would be more appropriate.

- **Science Board:** This proposal establishes a Science Board, and describes in some detail how the science board would be organized. However, it is largely quiet about the science program itself. In addition, the proposals appear to replace many of the current duties of the CalFed Independent Science Program. The Conference Committee may wish to consider expanding on the description of the science program and reconciling that program with the CalFed Independent Science Program.

## **B. Governance: Water Master Authority**

- **Concept:** This proposal would require SWRCB to appoint a “Delta Watermaster” who would be an agent of SWRCB, and would be vested with all of the statutory enforcement authority granted to SWRCB to direct daily operations of all surface water diversions within the Delta watershed. This proposal appears to be directed to ensure someone is responsible for ensuring all the laws and regulations regarding water diversions within the Delta watershed are enforced – essentially, the Delta Cop.

This approach differs from efforts within the Bay Delta Conservation Program. There, the strategy appears to be to have state and federal wildlife agencies and the project operators self-police the daily operations of the future water projects consistent with water supply and environmental objectives. Some would question how such a process would have a different result than that under the old CalFed program.

- **Expertise:** This proposal would require the Delta Watermaster to have a background in one or more of the following.
  - Water rights laws or water rights enforcement.
  - Water quality laws or water quality enforcement.
  - State Water Project or federal Central Valley Project operations.
  - State or federal endangered species laws or endangered species enforcement.

While expertise in water project operations would clearly be useful, questions of conflict of loyalties might arise if the Delta Watermaster’s immediately previous job was with the CVP, SWP or a CVP/SWP contractor. The Conference Committee may consider adding provisions to eliminate such appearance of conflict.

- **Responsibilities:** This proposal would provide the Delta Watermaster broad responsibilities, including operations of all projects in the watershed. That’s a tall order for a new position.

The Conference Committee might wish to consider providing the Delta Watermaster some initial priority focus, such as on CVP and SWP operations, in-delta water users, and in-delta water dischargers, or perhaps establishing a phase in of such responsibilities. Another option would be to direct SWRCB to establish such priorities.

This proposal would provide the Delta Watermaster authority to do all of the following:

- Enforce water rights for diversions.
- Exercise the state’s public trust responsibilities.
- Enforce the California Endangered Species Act as to diversions.
- Make judgments as to reasonable use pursuant to the California Constitution.
- Enforce water quality objectives established in the Delta Water Quality Control Plan.
- Consider and decide on petitions for changes, with a duration of 90 days or less, in water right permits or licenses for diversions within the Delta watershed.

Some have suggested that to enforce all relevant laws, the Delta Watermaster may need additional authorities, especially regarding provisions of the Fish and Game Code. The appeal process for Watermaster actions also may require additional authorities.

### **C. Water Conveyance Decision**

- **Council Authority:** This proposal would require the Council to authorize any water conveyance facility proposed to be constructed within or around the Delta consistent with the Council's obligation to comprehensively address the coequal goals, including, but not limited to, water supply reliability. To do so, the Council would need to make a series of specific determinations.

Some have questioned the wisdom of providing this authority to an appointed board. A number of CVP and SWP contractors, for example, assert that DWR already has the authority to construct "delta facilities" and to the extent that such a decision on conveyance would have environmental impacts, the Bay Delta Conservation Plan will appropriately address them. Others have suggested that by delegating the decision making authority to an appointed board, the Legislature has abrogated its legislative responsibilities.

- **Conditions:** This proposal would require the Council, before taking any action to authorize the construction of any water conveyance facility within or around the Delta, to make the following determinations:
  - SWRCB has adopted instream flow determinations for the Sacramento River and waterways within the Delta that provide the volume, quality, and timing of water required for a healthy Delta ecosystem under different conditions, including seasonal, annual, and inter-annual bases, and including an assessment of increased spring and fall outflow and increased San Joaquin River inflow.
  - Each water agency that relies on water exports from the Delta watershed has submitted to the Council a contingency plan for Delta water supply curtailments and drought, consistent with SWRCB's instream flow requirements, and a long-term plan for reducing reliance on those exports.
  - The proposed water conveyance facility will be operated in a manner consistent with achieving the coequal goals.

Some have suggested that these conditions are unnecessarily expansive, others have suggested they are incomplete at best.

### **D. Delta Finance**

- **Diversion Fee:** This proposal requires the Council to impose an annual fee on each person or entity who holds a right, permit, or license to divert water within the watershed of the San Francisco Bay/Sacramento-San Joaquin Delta. The proposal further states that the proceeds are to be initially used to establish the Council, develop the Delta Plan, and implement the early actions. Beginning in 2013, the fees would be adjusted to cover the costs of facilities and program activities intended to mitigate damage to fish populations and other natural resources in the Delta and its tributaries that are reasonably related to the diversion of water and other activities of the holder of water rights, and a fair share of administrative costs.

Separately, this proposal would require SWP contractors and CVP contractors to pay the entire costs of the environmental review, planning, design, construction, and operation of any new Delta water conveyance facility, and any necessary mitigation to reduce environmental damage caused by water export operations. This raises a number of issues:

- The Delta Plan will include other programs and projects beyond conveyance and mitigation reasonably related to diversion of water. While the proposal also included revenue bond authority, it is not clear, for example, what the funding source would be for wetlands restoration, for example, or flood easements.
  - Council has broad authorities to define its Delta Plan, and has fee authority to cover much of its costs. It is not clear who, if anyone, has the authority to review the Delta Plan for its cost effectiveness or to reign in wasteful spending plans.
  - Fees paid by each person or entity are to bear a fair and reasonable relationship to those charges. It is not clear whether or not that means the fees are to be charged volumetrically, by capacity of diversion, seniority of right, or some other basis. Presumably, such issues would be determined by the regulation setting process. The Conference Committee might wish to provide some statutory guidance.
- **Finance Plan:** This proposal also requires the Council to develop a finance plan for implementation of the Delta Plan, which may identify additional sources for funding. These other sources are not specified, but may include general obligation bonds, federal funding, or funding "volunteered" pursuant to the BDCP or other regulatory agreements.

#### Other Issues:

As the Conference Committee begins deliberating this proposal, it also may want to consider technical amendments to address the following:

- What About the California Bay-Delta Authority? This proposal would leave intact the California Bay Delta Authority Act. That act was enacted to oversee the implementation of the CalFed Bay Delta Program. Among other things, that Act created the California Bay Delta Authority (CBDA). The CBDA has not met in over two years because of inability to get a quorum. It is not clear whether this proposal is intended to completely replace CalFed, supplement CalFed, or operate independently from CalFed.
- Definition of the Delta needs to be cleaned up. For example, § 85058 refers to the "Delta estuary as defined in Section 12220," but § 12220 does not include the word "estuary"
- Section 85215 requires the council to review specified plans for consistency with the Delta Plan, including "all annual water project operation plans." It is not clear whether this includes just the SWP and CVP, Contra Costa's operations, Central and South Delta Water District operations, or those upstream in the upper watershed.
- It is not clear why the Council should have to meet at least twice in the Delta.

*The Assembly Water, Parks & Wildlife Committee and the Senate Natural Resources & Water Committee collaborated in preparing this analysis.*

# PREPRINT SENATE BILL No. 1

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**Proposed by Senator Simitian**

August 4, 2009

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SB 1 2009

An act to add Division 35 (commencing with Section 85000) to the Water Code, relating to the Sacramento-San Joaquin Delta.

## LEGISLATIVE COUNSEL'S DIGEST

Preprint SB 1, as proposed, Simitian. Sacramento-San Joaquin Delta.

(1) Existing law requires the Secretary of the Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill would establish the Delta Stewardship Council to advance the coequal goals of assuring a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem and certain values of the Delta. The council would be required to consist of 7 members appointed in a specified manner. The bill would specify the powers of the council. The council would be required to establish, by regulation, a consultation process for the purposes of the act. The bill would subject plans prepared by certain state agencies to review by the council to determine consistency with the Delta Plan, to be adopted pursuant to \_\_\_\_ of the 2009–10 Regular Session of the Legislature.

The bill would establish the Delta Independent Science Board, whose members would be selected by the council. The bill would require the Delta Independent Science Board to develop a scientific program relating to the management of the Delta.

The bill would require the Delta Plan to provide for financing of all Delta programs consistent with specified “beneficiaries pay” principles. The bill would specify costs to be borne by persons or entities that



contract to receive water from the State Water Project or the federal Central Valley Project. The bill would require the council to impose an annual fee on each person or entity that holds a right, permit, or license to divert water within the watershed of the San Francisco Bay/Sacramento-San Joaquin Delta. The bill would require the moneys generated by the imposition of the fee to be deposited in an unspecified fund, which the bill would establish in the State Treasury. The moneys in the fund, upon appropriation by the Legislature, would be required to be expended according to a specified schedule, for purposes that include the completion of the Delta Plan, the implementation of specified early actions, and the payment of the costs incurred by the council and the costs of facilities and activities intended to mitigate certain damage to fish populations and other natural resources in the Delta.

The bill would require the board to make determinations with regard to instream flow needs for rivers and streams within and outside the Delta. The board would be required to submit those determinations to the council. The board would be required to charge the department for the costs associated with certain of these determinations. The bill would require the board to appoint a special master for the Delta, referred to as the Delta Watermaster. The Delta Watermaster would be vested with all of the statutory enforcement authority granted to the board to direct daily operations of all surface water diversions within the Delta watershed. The decisions of the Delta Watermaster would be appealed to an administrative law judge, appointed by the board. The administrative law judge would be authorized to issue an order that stays a decision of the Delta Watermaster, subject to review by the board.

(2) These provisions would only become operative if \_\_\_\_ of the 2009–10 Regular Session of the Legislature are enacted and become effective on or before January 1, 2010.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

- 1 SECTION 1. Division 35 (commencing with Section 85000)
- 2 is added to the Water Code, to read:

DIVISION 35. SACRAMENTO-SAN JOAQUIN DELTA  
REFORM ACT OF 2009

PART 1. GENERAL PROVISIONS

CHAPTER 1. SHORT TITLE AND LEGISLATIVE FINDINGS

85000. This division shall be known, and may be cited, as the Sacramento-San Joaquin Delta Reform Act of 2009.

85001. The Legislature finds and declares that:

(a) The Sacramento-San Joaquin Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable. Protecting the public trust and improving the stewardship of these precious resources requires fundamental reorganization of the state's management of Delta watershed resources.

(b) The Legislature finds and declares that, in response to the Delta crisis, the Legislature and the Governor required development of a new long-term strategic vision for managing the Delta. The Governor appointed a Blue Ribbon Task Force to recommend a new "Delta Vision Strategic Plan" to his cabinet committee, which, in turn, made recommendations for a Delta Vision to the Governor and the Legislature on January 3, 2009.

(c) By enacting this division, it is the intent of the Legislature to facilitate the implementation of a program for the sustainable management of the Sacramento-San Joaquin Delta ecosystem and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable California Delta Ecosystem and Water Plan.

85002. The Legislature finds and declares that Sacramento-San Joaquin Delta, referred to as "the Delta" in this division, 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 ecosystem on the west coast of North and South America.

85003. The Legislature finds and declares all of the following:

(a) Originally, the Delta was a shallow wetland with water covering the area for many months of the year. Natural levees, created by deposits of sediment, allowed some islands to emerge during the dry summer months. Salinity would fluctuate, depending



1 on the season and the amount of precipitation in any one year, and  
2 the species that comprised the Delta ecosystem had evolved and  
3 adapted to this unique, dynamic system.

4 (b) Delta property ownership developed pursuant to the federal  
5 Swamp Land Act of 1850, and state legislation enacted in 1861,  
6 and as a result of the construction of levees to keep previously  
7 seasonal wetlands dry throughout the year. That property  
8 ownership, and the exercise of associated rights, continue to depend  
9 on the landowners' maintenance of those privately owned levees  
10 and do not include any right to state funding of levee maintenance  
11 or repair.

12 (c) In 1933, the Legislature approved the California Central  
13 Valley Project Act, which relied upon the transfer of Sacramento  
14 River water south through the Delta and maintenance of a more  
15 constant salinity regime by using upstream reservoir releases of  
16 freshwater to create a hydraulic salinity barrier. As a result of the  
17 operations of state and federal water projects, the natural salinity  
18 variations in the Delta have been altered. Restoring a healthy  
19 estuarine ecosystem in the Delta may require developing a more  
20 natural salinity regime in parts of the Delta.

## 21 22 CHAPTER 2. DELTA POLICY 23

24 85020. (a) The coequal goals shall be the standard for  
25 long-term management of Delta water and environmental resources.

26 (b) The policy of the State of California is to achieve the  
27 following objectives that the Legislature declares are inherent in  
28 the coequal goals for management of the Delta:

29 (1) Manage the Delta's water and environmental resources over  
30 the long-term to achieve the coequal goals.

31 (2) Protect and enhance the unique cultural, recreational, and  
32 agricultural values of the California Delta as an evolving place.

33 (3) Restore the Delta ecosystem, including its fisheries, as the  
34 heart of a healthy estuary.

35 (4) Promote statewide water conservation, efficiency, and  
36 sustainable use.

37 (5) Achieve water quality objectives in the Delta.

38 (6) Establish an appropriate balance between water reserved for  
39 public trust and ecosystem restoration purposes and water available  
40 for allocation and appropriation for other beneficial uses.

1 (7) Improve the existing water conveyance system and expand  
2 statewide water storage.

3 (8) Reduce risks to people, property, and state interests in the  
4 Delta by effective emergency preparedness, appropriate land uses,  
5 and strategic levee investments.

6 (9) Establish a new governance structure with the authority,  
7 responsibility, accountability, scientific support, and adequate and  
8 secure funding to achieve these objectives.

9 85021. The policy of the State of California is to reduce  
10 dependence on water from the Delta watershed, over the long-term,  
11 for statewide water supply reliability. Each region that depends  
12 on water from the Delta shall improve its regional self-reliance  
13 for water through investment in water-use efficiency, water  
14 recycling, advanced water technologies, local and regional water  
15 supply projects, and improved regional coordination of local and  
16 regional water supply efforts.

17 85022. (a) It is the intent of the Legislature that state and local  
18 land use actions are consistent with the Delta Plan, including the  
19 commission's resources management plan. This section's findings,  
20 policies, and goals apply to Delta land-use planning and  
21 development.

22 (b) The actions of the council shall be guided by the findings,  
23 policies, and goals expressed in this section when reviewing  
24 decisions of the commission pursuant to Division 19.5  
25 (commencing with Section 29700) of the Public Resources Code.

26 (c) The Legislature finds and declares as follows:

27 (1) That the Delta is a distinct and valuable natural resource of  
28 vital and enduring interest to all the people and exists as a delicately  
29 balanced estuary ecosystem of hemispheric importance.

30 (2) That the permanent protection of the Delta's natural and  
31 scenic resources is a paramount concern to present and future  
32 residents of the state and nation.

33 (3) That to promote the public safety, health, and welfare, and  
34 to protect public and private property, wildlife, fisheries, and the  
35 natural environment, it is necessary to protect the ecological  
36 balance of the Delta and prevent its deterioration and destruction.

37 (4) That existing developed uses, and future developments that  
38 are carefully planned and developed consistent with the policies  
39 of this division, are essential to the economic and social well-being

1 of the people of this state and especially to working persons living  
2 and working in the Delta.

3 (d) The fundamental goals for managing land use in the Delta  
4 are to:

5 (1) Protect, maintain, and, where feasible, enhance and restore  
6 the overall quality of the Delta environment and its natural and  
7 artificial resources.

8 (2) Ensure orderly, balanced utilization and conservation of  
9 Delta resources taking into account the social and economic needs  
10 of the people of the state.

11 (3) Maximize public access to Delta resources and maximize  
12 public recreational opportunities in the Delta consistent with sound  
13 resources conservation principles and constitutionally protected  
14 rights of private property owners.

15 (4) Ensure priority for Delta-dependent and Delta-related  
16 development over other development in the Delta.

17 (5) Encourage state and local initiatives and cooperation in  
18 preparing procedures to implement coordinated planning and  
19 development for mutually beneficial uses, including educational  
20 uses, in the Delta.

21 85023. The longstanding constitutional principle of reasonable  
22 use and the public trust doctrine shall be the foundation of state  
23 water management policy and are particularly important and  
24 applicable to the Delta.

### 25 CHAPTER 3. MISCELLANEOUS PROVISIONS

26  
27  
28 85031. This division does not diminish, impair, or otherwise  
29 affect any area of origin, watershed of origin, county of origin, or  
30 any other water rights protections provided under the law. This  
31 division does not limit or otherwise affect the application of  
32 Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463,  
33 and Sections 12200 to 12220, inclusive.

34 85032. This division does not affect the Natural Community  
35 Conservation Planning Act (Chapter 10 (commencing with Section  
36 2800) of Division 3 of the Fish and Game Code).

37 85033. This division does not expand the liability of the state  
38 for flood protection in the Delta or its watershed.

CHAPTER 4. DEFINITIONS

85050. Unless the context otherwise requires, the definitions set forth in this chapter govern the construction of this division.

85051. “Acquisition” means the acquisition of a fee interest or any other interest, including easements, leases, and development rights.

85053. “Bay Delta Conservation Plan” means a natural community conservation plan that complies with the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), and that may include a habitat conservation plan that would be created pursuant to Section 10 of the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.) and accompanying regulations.

85054. “Coequal goals” means the goals of assuring a reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem and the unique cultural, recreational, and agricultural values of the Delta as an evolving place.

85055. “Commission” means the Delta Protection Commission established in Division 19.5 (commencing with Section 29700) of the Public Resources Code.

85056. “Conservancy” means the Sacramento-San Joaquin Delta Conservancy established in Section 32320 of the Public Resources Code.

85057. “Council” means the Delta Stewardship Council established in Section 85200.

85058. “Delta” means the Sacramento-San Joaquin Delta estuary, as defined in Section 12220, and includes the Suisun Marsh, as defined in Section 29101 of the Public Resources Code, and the Yolo Bypass.

85059. “Delta Plan” means the comprehensive, long-term management plan for the Delta to achieve the coequal goals as adopted by the council in accordance with this division.

85060. “Delta watershed” means the Sacramento River Hydrologic Region and the San Joaquin River Hydrologic Region as described in the department’s Bulletin No. 160-05.

85061. “Early actions” means the actions required to be initiated prior to adoption of the Delta Plan.

85063. “Private water agency” means a public utility as defined in Section 216 of the Public Utilities Code that provides water

1 service as defined in Section 515 or a mutual water company as  
2 defined in Section 2725 of the Public Utilities Code.

3 85064. “Public water agency” means a public entity, as defined  
4 in Section 514, that provides water service, as defined in Section  
5 515.

6 85065. “Restoration” means the application of ecological  
7 principles to restore a degraded or fragmented ecosystem and return  
8 it to a condition in which its biological and structural components  
9 achieve a close approximation of its natural potential.

10 85066. “Strategic Plan” means both the “Delta Vision Strategic  
11 Plan” issued by the Delta Vision Blue Ribbon Task Force on  
12 October 17, 2008, and the “Delta Vision Implementation Report”  
13 adopted by the Delta Vision Committee and dated December 31,  
14 2008. Where the two documents conflict, the “Delta Vision  
15 Strategic Plan” issued by the Delta Vision Blue Ribbon Task Force  
16 shall prevail.

## 17 18 PART 2. EARLY ACTIONS 19

20 85080. Upon appointment of a quorum of the council, the  
21 council shall assume responsibility for overseeing implementation  
22 of early actions, as provided in this part. The council may identify  
23 early actions in addition to those identified in this part pertaining  
24 to transportation, utilities, recreation, water supply, ecosystem  
25 improvements, and flood control.

26 85081. (a) Within 60 days of the appointment of a quorum of  
27 the council, the council shall request a list of nominees to serve  
28 on the Delta Independent Science Board from the Director of the  
29 University of California Center for Water Resources and the  
30 Director of the United States Geologic Survey office in  
31 Sacramento.

32 (b) The council shall appoint persons to serve on the Delta  
33 Independent Science Board, as established in Section 85280, within  
34 30 days of receiving the list of nominees.

35 85082. Within 120 days of the appointment of a quorum of the  
36 council, the council shall develop and implement a strategy to  
37 appropriately engage participation of the federal agencies with  
38 responsibilities in the Delta. This strategy may include developing  
39 the Delta Plan consistent with the federal Coastal Zone  
40 Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the federal

1 Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and Section 8 of  
2 the federal Reclamation Act of 1902.

3 85083. Within 120 days of the appointment of a quorum of the  
4 council, the council shall begin developing information necessary  
5 to develop the Delta Plan in accordance with this division,  
6 including, but not limited to, all of the following:

7 (a) A list of all applicable legal requirements, including  
8 requirements relating to federal and state endangered species laws  
9 that pertain to the Delta.

10 (b) Determination of the relevance of other federal, state, and  
11 local plans to the development of the Delta Plan.

12 85084. The council shall develop an interim plan that includes  
13 recommendations for early actions, projects, and programs  
14 including, but not limited to, the following:

15 (a) Develop and implement an interim finance strategy for  
16 developing the Delta Plan and taking the early actions described  
17 in this part.

18 (b) Commence study of the transfer of the State Water Project  
19 to a separate public agency or utility.

20 (c) Designate the department and the Department of Fish and  
21 Game to implement near-term restoration projects, including, but  
22 not limited to, Dutch Slough tidal marsh restoration, Meins Island  
23 tidal marsh restoration, and floodplain improvements in the Yolo  
24 Bypass.

25 (d) Direct the Department of Fish and Game, consistent with  
26 the board's determinations of instream flow needs in the Delta  
27 pursuant to Section 85086, to submit information and any  
28 recommendations as to the Delta's instream flow needs to the  
29 board by April 1, 2010. The information shall include only  
30 information in its possession that the Department of Fish and Game  
31 deems reliable.

32 85085. The department shall do all of the following:

33 (a) Conduct a study of the Middle River Corridor Two-Barrier  
34 pilot project.

35 (b) Evaluate the effectiveness of the Three Mile Slough Barrier  
36 project.

37 (c) Construct demonstration fish protection screens at Clifton  
38 Court Forebay.

39 (d) Assist the Department of Fish and Game in implementing  
40 early action ecosystem restoration projects, including, but not



1 limited to, Dutch Slough tidal marsh restoration, Meins Island tidal  
2 marsh restoration, and floodplain improvements in the Yolo  
3 Bypass.

4 85086. (a) The board shall establish an effective system of  
5 Delta watershed diversion data collection and public reporting by  
6 December 31, 2010.

7 (b) It is the intent of the Legislature to establish an accelerated  
8 process, that is distinct from the imposition of minimum instream  
9 flow requirements pursuant to Section 1257.5, to determine  
10 instream flow needs of the Delta and its tributaries. It is the further  
11 intent of the Legislature that this accelerated process will facilitate  
12 the planning decisions that are required to achieve the objectives  
13 of the Delta Plan and the coequal goals. These determinations do  
14 not affect the statutory rights of any party to adjudicate statutory  
15 instream flow requirements.

16 (c) (1) The board, in consultation with the Department of Fish  
17 and Game and by June 30, 2010, shall complete an analysis of the  
18 best available scientific information in existence as of the date of  
19 enactment of this division and determine the instream flow needs  
20 in the Delta, from the Sacramento River watershed, for ecosystem  
21 and water quality purposes.

22 (2) The board may not grant any petition to change a point of  
23 diversion in the Delta that is submitted by the department on behalf  
24 of the State Water Project or by the United States Bureau of  
25 Reclamation on behalf of the federal Central Valley Project before  
26 the board makes its determination pursuant to paragraph (1).

27 (d) (1) The board shall charge the department for the costs of  
28 this analysis and determination pursuant to the board's authority  
29 to regulate the water rights of the State Water Project and the  
30 federal Central Valley Project.

31 (2) The department shall obtain reimbursement for those charges  
32 from the State Water Project contractors, pursuant to the existing  
33 State Water Project contracts, and may use funding made available  
34 pursuant to the Financial Assistance Agreement for the Delta  
35 Habitat Conservation and Conveyance Program, as executed by  
36 the United States Bureau of Reclamation on March 13, 2009.

37 (e) The board, by December 31, 2010, shall submit a prioritized  
38 schedule to complete determinations as to instream flow needs for  
39 the Delta and for high priority rivers and streams in the Delta  
40 watershed, not otherwise described in subdivision (c), by 2012,

1 and for all major rivers and streams outside the Delta by 2018. In  
2 developing this schedule, the board shall consult with the  
3 Department of Fish and Game as to the timing of its submission  
4 of recommendations for instream flow needs.

5 (f) The board shall submit its instream flow need determinations  
6 pursuant to this section to the council within 30 days of final  
7 adoption.

8 (g) The instream flow need determinations required by this  
9 section shall be subject to judicial review only in the Court of  
10 Appeals for the Third District, and that court may designate a  
11 special master or an administrative law judge for the purpose of  
12 assisting the court. The Court of Appeals review shall be based on  
13 the board's administrative record. The judicial standard of review  
14 shall be whether the board's determinations as to necessary  
15 instream flows were arbitrary and capricious.

### 16 17 PART 3. DELTA GOVERNANCE

#### 18 19 CHAPTER 1. DELTA STEWARDSHIP COUNCIL

20  
21 85200. (a) The Delta Stewardship Council is hereby established  
22 to advance the coequal goals.

23 (b) (1) The council shall consist of seven members, of which  
24 four members shall be appointed by the Governor and confirmed  
25 by the Senate, one member shall be appointed by the Senate  
26 Committee on Rules, one member shall be appointed by the  
27 Speaker of the Assembly, and one member shall be the Chairperson  
28 of the Delta Protection Commission. Initial appointments to the  
29 council shall be made by July 1, 2010.

30 (2) The initial term of office of each member of the council  
31 shall be two, four, or six years, as specified in subdivision (c), and  
32 all subsequent terms shall be eight years.

33 (3) No member of the council shall serve two consecutive terms,  
34 but a member may be reappointed after a period of two years  
35 following the end of his or her term, except that those members  
36 of the council that serve an initial term of two or four years may  
37 be immediately appointed to a subsequent full eight-year term.

38 (c) The Governor, upon the Governor's appointment of members  
39 pursuant to subdivision (b), shall designate his or her appointments  
40 as serving initial terms of either two or four years. One class shall



1 have three members and the other two classes shall have two  
2 members each. For the class that has three members, the terms of  
3 office shall be two years. The second class, composed of two  
4 members, shall serve four years. The third class, composed of two  
5 members, one each appointed by the Senate Rules Committee and  
6 the Speaker of the Assembly, by July 1, 2010, shall serve six years.  
7 Thereafter, the terms of all succeeding members shall be eight  
8 years.

9 (d) Any vacancy shall be filled by the appointing authority  
10 within 60 days. If the term of a council member expires, and no  
11 successor is appointed within the allotted timeframe, the existing  
12 member may serve up to 180 days beyond the expiration of his or  
13 her term.

14 (e) The council members shall select a chairperson from among  
15 its members, who shall serve for not more than four years in that  
16 capacity.

17 (f) The council shall meet once a month in a public forum. At  
18 least two meetings each year shall take place at a location within  
19 the Delta.

20 85201. The chairperson shall serve full time. Other members  
21 shall serve one-third time. The council may select a vice  
22 chairperson and other officers determined to be necessary.

23 (a) Each member of the council shall receive the salary provided  
24 for in Section 11564 of the Government Code.

25 (b) The members of the council shall be reimbursed for expenses  
26 necessarily incurred in the performance of official duties.

27 (c) The council shall appoint an executive officer who shall  
28 serve full time.

29 (d) The executive officer shall hire employees necessary to carry  
30 out council functions.

31 (e) The number of employees and qualifications of those  
32 employees shall be determined by the council, subject to the  
33 availability of funds.

34 (f) The salary of each employee of the council shall be  
35 determined by the State Personnel Board, and shall reflect the  
36 duties and responsibilities of the position.

37 (g) All persons employed by the council are state employees,  
38 subject to the duties, responsibilities, limitations, and benefits of  
39 the state.

1 85202. Council members shall possess diverse expertise and  
2 reflect a statewide perspective.

3 85203. The headquarters of the council shall be located in  
4 Sacramento.

5 85204. The council shall establish and oversee a committee of  
6 agencies responsible for implementing the Delta Plan. Each agency  
7 shall coordinate its actions pursuant to the Delta Plan with the  
8 council and the other relevant agencies.

9  
10 CHAPTER 2. MISSION, DUTIES, AND RESPONSIBILITIES OF THE  
11 COUNCIL  
12

13 85210. The council has all of the following powers:

14 (a) To sue or be sued.

15 (b) To enter into contracts.

16 (c) To employ the services of public, nonprofit, and private  
17 entities.

18 (d) To delegate administrative functions to council staff.

19 (e) To employ its own legal staff or contract with other state or  
20 federal agencies for legal services, or both. The council may  
21 employ special legal counsel with the approval of the Attorney  
22 General.

23 (f) To receive funds, including funds from private and local  
24 governmental sources, contributions from public and private  
25 sources, as well as state and federal appropriations.

26 (g) To disburse funds through grants, public assistance, loans,  
27 and contracts.

28 (h) To request reports from state, federal, and local governmental  
29 agencies on issues related to the implementation of the Delta Plan.

30 (i) To adopt regulations as required for the implementation of  
31 this division.

32 (j) To obtain and hold regulatory permits and prepare  
33 environmental documents.

34 (k) To comment on state agency environmental impact reports  
35 for projects outside the Delta that the council determines will have  
36 a significant impact on the Delta.

37 (l) To hold hearings and conduct investigations in all parts of  
38 the state necessary to carry out the powers vested in it, and for  
39 those purposes has the powers conferred upon the heads of state  
40 departments pursuant to Article 2 (commencing with Section

1 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the  
2 Government Code. Any hearing or investigation by the council  
3 may be conducted by any member of the council, or other designee,  
4 upon authorization of the council, and he or she shall have the  
5 powers granted to the council by this section, provided that any  
6 final action of the council shall be taken by a majority of the  
7 members of the council at a meeting duly called and held.

8 85211. The Delta Plan shall include performance measurements  
9 that will enable the council to track progress in meeting the coequal  
10 goals and the objectives of the Delta Plan. The performance  
11 measurements shall include, but need not be limited to, quantitative  
12 or otherwise measurable assessments of the status and trends in  
13 all of the following:

14 (a) The health of the Delta's estuary ecosystem for supporting  
15 aquatic and terrestrial species, habitats, and processes.

16 (b) Viable populations of Delta fisheries and other aquatic  
17 organisms.

18 (c) The reliability of California water supply connected to the  
19 Delta.

20 85212. (a) The council, by regulation, shall adopt a  
21 consultation process for the purposes of this division, which shall  
22 include remedies, with all state agencies, departments, boards, and  
23 commissions that have specified responsibilities to develop,  
24 implement, monitor, and adhere to all or part of the Delta Plan.  
25 These regulations shall ensure, to the maximum extent practicable,  
26 that the actions of these entities achieve the coequal goals and are  
27 consistent with the Delta Plan. Pursuant to these regulations, the  
28 council is granted authority to initiate consultation and require a  
29 remedy when an action or omission of action by these entities are  
30 contrary to the Delta Plan or could contribute to the failure of  
31 achieving the coordinated and timely achievement of the coequal  
32 goals.

33 (b) The council shall accept comments from the public and  
34 stakeholders regarding state agency actions or omission of actions  
35 that may be inconsistent with the Delta Plan or could contribute  
36 to the failure of achieving the coordinated and timely achievement  
37 of the coequal goals. The council shall review the comments and  
38 either initiate consultation or respond in writing as to why a  
39 consultation is not needed or justified.

1 85215. To ensure effective coordination and consistency with  
2 the Delta Plan, the council shall identify those state agency plans  
3 that should be reviewed by the council, and if necessary amended  
4 to be consistent with Delta Plan. In addition to other plans  
5 identified by the council, the following state agencies and the  
6 specified plans shall be subject to review by the council to  
7 determine consistency with the Delta Plan:

8 (a) The Delta Protection Commission's Resource Management  
9 Plan.

10 (b) The Delta Conservancy's Strategic Plan.

11 (c) The Suisun Marsh Management Plan.

12 (d) All annual water project operation plans.

13 85216. Within 180 days from the date of the adoption of the  
14 Delta Plan or any amendments or updates to the Delta Plan by the  
15 council, the state agencies shall submit their plans, as described  
16 in Section 85215, or their proposed amendments to those plans,  
17 to the council for review.

18 85217. The council shall act on the proposed state agency plan  
19 or plan amendments within 60 days from the date of submittal of  
20 the proposed plan or plan amendments. The council shall either  
21 determine the plan or plan amendments are consistent with the  
22 Delta Plan or remand the plan or amendments to the state agency  
23 for reconsideration. The council shall approve or remand the  
24 proposed plan or plan amendments by a majority vote of the  
25 council membership only after concluding that the plan is  
26 consistent with the Delta Plan.

27 85218. A state agency shall adopt its proposed plan or plan  
28 amendment within 120 days after their approval by the council.

29 85319. (a) Any water conveyance facility proposed to be  
30 constructed within or around the Delta shall be authorized by the  
31 council pursuant to this division and consistent with the council's  
32 obligation to comprehensively address the coequal goals, including,  
33 but not limited to, water supply reliability.

34 (b) Prior to taking any action to authorize the construction of  
35 any water conveyance facility within or around the Delta, the  
36 council shall make the following determinations:

37 (1) The board has adopted instream flow determinations for the  
38 Sacramento River and waterways within the Delta that provide  
39 the volume, quality, and timing of water required for a healthy  
40 Delta ecosystem under different conditions, including seasonal,

1 annual, and interannual bases, and including an assessment of  
2 increased spring and fall outflow and increased San Joaquin River  
3 inflow.

4 (2) Each water agency that relies on water exports from the  
5 Delta watershed has submitted to the council a contingency plan  
6 for Delta water supply curtailments and drought, consistent with  
7 the board's instream flow requirements, and a long-term plan for  
8 reducing reliance on those exports.

9 (3) The proposed water conveyance facility will be operated in  
10 a manner consistent with achieving the coequal goals.

11 85220. Nothing in this chapter affects the authority of the  
12 Department of Fish and Game or the board.

### 13 CHAPTER 3. DELTA WATERMASTER

14  
15  
16 85230. (a) The board shall appoint a special master for the  
17 Delta, whose title shall be "the Delta Watermaster."

18 (b) The council shall provide a list to the board recommending  
19 at least one candidate to serve as the Delta Watermaster. The initial  
20 recommendation shall be made within 90 days of the appointment  
21 of a quorum of the council. The council shall make subsequent  
22 recommendations within 60 days of notification by the board of a  
23 vacancy.

24 (c) The council shall recommend individuals who have extensive  
25 knowledge and experience in one or more of the following areas:

26 (1) Water rights laws or water rights enforcement.

27 (2) Water quality laws or water quality enforcement.

28 (3) State Water Project or federal Central Valley Project  
29 operations.

30 (4) State or federal endangered species laws or endangered  
31 species enforcement.

32 (d) The board shall select one individual from the list provided  
33 by the council to act as the Delta Watermaster, within 60 days of  
34 receipt of the list. If the board finds, that none of the candidates  
35 meet the requirements of this chapter, the board shall notify the  
36 council of that finding and that a vacancy exists.

37 85231. (a) The Delta Watermaster shall be an agent of the  
38 board, and shall be vested with all of the statutory enforcement  
39 authority granted to the board to direct daily operations of all  
40 surface water diversions within the Delta watershed. The Delta

Watermaster's authority shall include, but is not be limited to, the duty to do all of the following:

- (1) Enforce water rights for diversions.
- (2) Exercise the state's public trust responsibilities.
- (3) Enforce the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code) as to diversions.
- (4) Make judgments as to reasonable use pursuant to Section 2 of Article X of the California Constitution.
- (5) Enforce water quality objectives established in the Delta Water Quality Control Plan.
- (6) Consider and decide on petitions for changes, with a duration of 90 days or less, in water right permits or licenses for diversions within the Delta watershed.
- (b) The board shall amend the terms and conditions of water right permits or licenses for diversions within the Delta watershed to delegate authority to the Delta Watermaster to act on the board's behalf.

85232. Delta Watermaster decisions may be appealed to an administrative law judge, which shall be appointed by the board to consider appeals pursuant to this section. The administrative law judge may issue an order that stays a decision by the Delta Watermaster pending a full board review of the decision, if the administrative law judge determines that the decision of the Delta Watermaster was not supported by substantial evidence in the record. An order of the administrative law judge that stays an order of the Delta Watermaster shall be set for hearing before the full board at the earliest possible meeting.

#### CHAPTER 4. DELTA INDEPENDENT SCIENCE BOARD

85280. (a) The Delta Independent Science Board is hereby established in state government. The Delta Independent Science Board shall have no more than 11 members, and shall include, but not be limited to, employed or retired scientists from federal and state agencies not having major project or regulatory authority over the Delta, the University of California, the California State University, and nongovernmental organizations.

(b) The council shall appoint members to the Delta Independent Science Board in accordance with Section 85081.

1 (c) The council shall select a chairperson from among the  
2 members.

3 (d) Scientists appointed to the Delta Independent Science Board  
4 shall have knowledge of hydrology, geomorphology, biology,  
5 climatology, economics, soils and civil engineering, seismology,  
6 geology, or other disciplines relevant to the management of the  
7 Delta watershed, as determined by the board.

8 85281. (a) The Delta Independent Science Board shall develop  
9 a scientific program to do all of the following:

10 (1) Research critical scientific issues of both the physical Delta  
11 and elsewhere in the state relevant to Delta management.

12 (2) Organize, assess, and synthesize the best available science  
13 for policymakers and the council.

14 (3) Review major projects undertaken to advance the goals of  
15 Delta Vision, upon request of the council, the conservancy, the  
16 commission, an independent water system operator, or the board.

17 (4) Conduct independent science and engineering reviews of  
18 the work of government agencies or consultant work upon the  
19 request of the council, the conservancy, or other state agencies.

20 (5) Establish communication channels to effectively transmit  
21 science and engineering results to broader and more diverse  
22 audiences through coordination with the council's public advisory  
23 group.

24 (6) Prepare discussion papers and interactive lectures.

25 (b) The board shall submit to the council an annual plan as to  
26 the most critical scientific issues requiring study. The council shall  
27 review that plan and may add topics for scientific inquiry.

28 85282. (a) The Delta Independent Science Board shall prepare  
29 an annual report for submission to the council on scientific issues  
30 related to the Delta.

31 (b) The Delta Independent Science Board shall include in the  
32 report scientific and technical findings regarding the management  
33 of the Delta and recommended actions of the council, an  
34 identification of short-term and long-term matters for research,  
35 and a description of the relevance of these matters to achieving  
36 the coequal goals.

37  
38 PART 5. DELTA FINANCE  
39



CHAPTER 1. GENERAL

85400. (a) “Beneficiary pays principle” means the allocation of project or program costs to beneficiaries in approximate proportion to the benefits received.

(b) For the purposes of applying the beneficiary pays principle, the following terms have the following meanings:

(1) “Benefit” means either a public benefit, private benefit, or shared benefit.

(2) “Private benefit” means either of the following:

(A) An improvement required as a means of meeting mitigation or other requirements associated with a project or permit.

(B) An enhancement or improvement where an individual or group of individuals can be identified as beneficiaries.

(3) “Shared benefit” means an improvement where there are public benefits and private benefits.

85401. The Delta Plan shall provide for financing of all Delta programs consistent with “beneficiaries pay” principles.

(a) For the purposes of implementing the beneficiaries pay principles, all of the following requirements apply:

(1) State funds shall fund projects that have public benefits. State funds shall not fund projects that do not have public benefits.

(2) Nonstate funds shall fund projects that have private benefits. Nonstate funds shall not fund projects that do not have private benefits.

(3) Where both private and public benefits are identified for a project, both project beneficiaries and the public are responsible for costs associated with the project in proportion to the benefits received.

(4) Notwithstanding paragraphs (1), (2), and (3), the council may allocate available state funds to pay for costs associated with a project that benefits a disadvantaged community, as defined in Section 79505.5.

(b) (1) Notwithstanding paragraph (1) of subdivision (a), fee revenues shall fund projects and programs consistent with the fee authorization.

(2) Notwithstanding paragraph (2) of subdivision (a), federal funds shall fund projects and programs consistent with the federal authorization.



1 85402. Not later than \_\_\_\_ of each year, the council shall  
2 develop and adopt a \_\_\_\_ year estimate, in annual increments, of  
3 all federal and state funds reasonably expected to be available  
4 during the following \_\_\_\_ fiscal years to implement the Delta Plan.

5 (a) (1) For the purpose of estimating revenues, the council shall  
6 assume that there will be no changes in existing state and federal  
7 statutes.

8 (2) If a general obligation bond measure has qualified for the  
9 ballot that would provide funds to implement the Delta Plan, the  
10 council may, in addition to the estimate of revenues developed  
11 pursuant to paragraph (1), develop an alternative estimate to reflect  
12 the approval of the bond measure.

13 (b) For the purposes of expenditures, the council shall prepare  
14 estimates with regard to the following:

15 (1) Annual expenditures for the administration of the council  
16 shall be not less than those expenditures authorized in the most  
17 recent Budget Act, adjusted for inflation.

18 (2) Annual expenditures for programs and projects identified  
19 in the Delta Plan.

20 (c) The estimate shall identify programs and projects that were  
21 accelerated or delayed from the prior year estimate, and the reason  
22 for the acceleration or delay.

23 85403. The activities of the council constitute a regulatory and  
24 resources management program, and also include the coordination  
25 of complex interactive regulatory and resources management  
26 programs administered by other agencies. The principle purpose  
27 of this program is to achieve the coequal goals and implement the  
28 Delta Plan.

29 85403.5. The council shall develop a finance plan that ensures  
30 the necessary funding to fulfill the goals of the Delta Plan and to  
31 mitigate the impacts of implementing the Delta Plan.

32  
33 CHAPTER 2. STATE WATER PROJECT AND CENTRAL VALLEY  
34 PROJECT  
35

36 85404. (a) The following actions and projects are subject to  
37 the provisions of this division and shall be paid for entirely by  
38 persons or entities that contract to receive water from the State  
39 Water Project and by persons or entities who contract to receive  
40 water from the federal Central Valley Project:

1 (1) The environmental review, planning, design, construction,  
2 and operation of any new Delta water conveyance facility,  
3 including all alternatives considered in the Bay Delta Conservation  
4 Plan or any environmental impact report that analyzes the Bay  
5 Delta Conservation Plan or certifies that plan.

6 (2) Any necessary mitigation to reduce environmental damage  
7 caused by water export operations and to produce higher quality  
8 water for purposes of export, including activities intended to  
9 mitigate for damage to fish populations and other natural resources  
10 in the Delta and its tributaries that are reasonably related to the  
11 export of water and other activities of the State Water Project and  
12 the federal Central Valley Project.

13 (b) Nothing in this section affects the ability of the council to  
14 issue revenue bonds, pursuant to Chapter 4 (commencing with  
15 Section 85407), to finance a project described in this section.

16  
17 CHAPTER 3. OTHER USERS OF WATER FROM THE BAY-DELTA  
18 WATERSHED  
19

20 85405. (a) There is hereby imposed an annual fee on each  
21 person or entity who holds a right, permit, or license to divert water  
22 within the watershed of the San Francisco Bay/Sacramento-San  
23 Joaquin Delta. The fee shall apply to holders of water rights,  
24 including riparian rights, appropriative rights without regard to  
25 the date on which those rights were perfected, pueblo rights, or  
26 any other rights to use water within the Delta watershed.

27 (b) Until December 31, 2012, the council shall establish fees in  
28 an amount that provides only for the funding necessary to complete  
29 the Delta Plan, establish the council, and implement the early  
30 actions identified in Part 2 (commencing with Section 85080). The  
31 council shall establish these fees initially by emergency regulation.

32 (c) Commencing January 1, 2013, and each year thereafter, the  
33 council shall, by regulation, set the fee schedule authorized by this  
34 section so that the total revenue collected from the fees equals the  
35 appropriate proposed annual budget; or, so that the total revenue  
36 collected from the fees equals the amount needed in the council's  
37 judgment to accomplish both the following:

38 (1) To pay the costs of facilities and program activities intended  
39 to mitigate damage to fish populations and other natural resources  
40 in the Delta and its tributaries that are reasonably related to the

1 diversion of water and other activities of the holder of water rights  
2 subject to this section.

3 (2) To pay the administrative costs and other costs of the council  
4 related to council activities financed pursuant to this part, including  
5 all costs incurred by the council or any other agency in establishing,  
6 administering, defending, or collecting the fees authorized pursuant  
7 to this section.

8 (d) The council shall set the fee schedule authorized by this  
9 section so that both of the following requirements are met:

10 (1) The fees paid by each person or entity pursuant to this section  
11 bear a fair and reasonable relationship to the environmental damage  
12 within the Delta or its tributaries committed in the past or occurring  
13 in the present, or likely to occur in the future, from the person's  
14 or entity's diversion of water that is subject to fees pursuant to this  
15 part.

16 (2) The fees paid by each person or entity bear a fair and  
17 reasonable relationship to the administrative and other costs of  
18 council activities financed pursuant to this part.

19 (e) Regulations adopted pursuant to this part may include  
20 provisions concerning the administration and collection of the fees.  
21 The fee schedule may be graduated as determined by the council  
22 to be necessary or advisable to meet the requirements of this  
23 chapter. The council may amend or revise regulations adopted  
24 pursuant to this part from time to time as it determines necessary  
25 or advisable.

26 (f) The council shall review and revise the fees each fiscal year  
27 as necessary to conform to the requirements of this part. If the  
28 council determines that the revenue collected during the preceding  
29 fiscal year was greater than or less than the revenues required in  
30 the judgment of the council to satisfy the purposes of this part, the  
31 council may further adjust the annual fees to compensate for the  
32 over or under collection of revenue.

33 85406. (a) The fees imposed pursuant to this part shall be  
34 administered and collected by the State Board of Equalization  
35 pursuant to the fee collection procedures law, (Part 30  
36 (commencing with Section 55001) of Division 2 of the Revenue  
37 and Taxation Code).

38 (b) The fee revenue shall be deposited in the \_\_\_\_ Fund which  
39 is hereby created in the State Treasury. Moneys in the fund, upon  
40 appropriation by the Legislature, shall be expended for the purpose

of this part, including the State Board of Equalization's costs of collection and administration of fees. All interest earned on the moneys which have been deposited in the \_\_\_\_ Fund shall be retained in the fund.

(c) The fees collected pursuant to this chapter and the earnings therefrom shall be used solely for the purposes of implementing this chapter. The council shall not collect fees pursuant to this chapter in excess of the amount that is reasonably anticipated by the council to fully implement this chapter.

#### CHAPTER 4. BONDS

85407. (a) For the purpose of providing money and funds to pay the cost and expense of carrying out this part, the council may, from time to time, issue bonds in the form and manner provided in Chapter 8 (commencing with Section 11700) of Part 3 of Division 6, except that for purposes of this chapter the following definitions shall apply:

(1) The word "department" in that Chapter 8 means the council.

(2) Bonds issued pursuant to this chapter shall be identified pursuant to Section 11705 as Delta Stewardship Council bonds.

(b) Payment and redemption of the bonds pursuant to that Chapter 8 shall be secured by a first and direct charge on revenues derived from fees collected pursuant to this part.

(c) Bonds and other documents prepared pursuant to this chapter shall be signed by the executive officer of the council.

(d) Proceeds of bonds issued pursuant to this chapter shall be deposited in the \_\_\_\_ Fund, as determined to be appropriate by the council.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement

1 to local agencies and school districts for those costs shall be made  
2 pursuant to Part 7 (commencing with Section 17500) of Division  
3 4 of Title 2 of the Government Code.

4 SEC. 3. This bill shall only become operative if \_\_\_\_ of the  
5 2009–10 Regular Session of the Legislature are enacted and  
6 become effective on or before January 1, 2010.

DRAFT

# **Preprint SB 4 (SB 458 Content) by Senator Wolk.**

## **Summary and Comments.**

**Bill Summary:** Preprint Senate Bill No. 4 (PSB 4) would revise the provisions of the Delta Protection Act and would create the Sacramento-San Joaquin Delta Conservancy to advance the coequal goals of assuring a reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem and the unique cultural, recreational, and agricultural values of the Delta as an evolving place.

Specifically, this bill would:

- 1) Reconstitute the Delta Protection Commission (DPC).
  - a) Reduce the membership of the DPC from 23 to 15, eliminating several state agencies.
  - b) Designate the DPC chair as a voting member of the Delta Stewardship Council (council).
- 2) Add Provisions Regarding A Regional Economic Development Plan.
  - a) Require the DPC to develop a new regional economic development plan for the Delta region, based on local plans, that identifies ways to encourage recreational investment along the key river corridors, as appropriate.
  - b) Create the Delta Investment Fund in the State Treasury.
    - i) Any funds within the Delta Investment Fund would be available, upon appropriation by the Legislature, to the DPC for the implementation of the regional economic development plan.
    - ii) Delta Investment Fund could receive funds from federal, state, local, and private sources.
- 3) Revise Requirements for the DPC's Resource Management Plan (RMP).
  - a) Instead of listing required outcomes, the RMP would be required to include specific elements, such as public safety recommendations.
  - b) Add a requirement that the RMP be updated every 5 years in years ending in 1 or 6.
  - c) Add requirement that Council review RMP for consistency with the Delta Plan and require the Council to approve the RMP, if consistent with the Delta Plan.
  - d) Requires DPC to implement RMP.
  - e) Eliminate the Office of planning and Research from RMP review and comment process.

4) Require DPC to Propose Recommendations for Inclusion in the Delta Plan.

- a) Require the DPC to develop, for consideration and incorporation in the Delta Plan by the council, a proposal to protect, enhance, and sustain the unique and enduring cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving ecosystem.
- b) Require the DPC to include the following in its proposal:
  - i) Relevant strategies described or recommended by Delta Conservancy's strategic plan.
  - ii) Plan to establish state and federal designation of the Delta as a place of special significance, which may include application for a federal designation as a National Heritage Area.
  - iii) Regional economic plan, for submission to the council, to support increased investment in agriculture, recreation, tourism, and other resilient Delta land uses.
- c) Require, to assist the DPC in its preparation of the proposal:
  - i) The Department of Parks and Recreation to prepare a proposal to expand within the Delta the network of state recreation areas, combining existing and newly designated areas. The proposal may incorporate appropriate aspects of any existing plans.
  - ii) The Department of Food and Agriculture to prepare a proposal, for submission to the commission, to establish market incentives and infrastructure to protect and enhance the economic and public values of Delta agriculture.
- d) Require the council to review and approve and incorporate the proposal, including RMP recommendations, into the Delta Plan, if the council determines that a DPC recommendation is feasible and consistent with the objectives of the Delta Plan,

5) Revise Provisions Regarding DPC Review and Approval of General Plans.

- a) Change the trigger for local governments to submit proposed general amendments for a consistency review:
  - i) *from* within 180 days of adoption by the DPC of a new or revised resources management plan,
  - ii) *to* within 180 days of adoption by the council of a Delta Plan, or a new or revised RMP, which ever comes first.
- b) Delete from the criteria for general plan reviews the criteria that the general plan, and any development approved or proposed that is consistent with the general plan, be consistent with the RMP.
- c) Add a requirement that if the DPC finds that a general plan is not consistent with the RMP:
  - i) The DPC would remand the general plan back to the originating local government with findings on items to be addressed.
  - ii) The local government would have 120 days to make changes and resubmit the revised general plan to the commission for review.
- d) Add a restriction that after the DPC approves a general plan or general plan amendment, no additional development could occur in the primary zone of the Delta unless the relevant proposed amendment to the general plan is determined to be consistent with the RMP.



6) Authorize DPC To Make Recommendations to Delta Stewardship Council.

- a) Authorize DPC to review, comment, and make recommendations to the council on any significant project or proposed project within the scope of the Delta Plan that may affect the unique cultural, recreational, and agricultural values within the primary and the secondary zones.
- b) Include in the review and comment authority all of the following:
  - i) Identifying impacts to the cultural, recreational, and agricultural values of the Delta.
  - ii) Recommending actions to avoid, reduce, or mitigate impacts to the cultural, recreational, and agricultural values of the Delta.
  - iii) Reviewing consistency of proposed project with the RMP and the Delta Plan.
  - iv) Identifying and recommending methods to address Delta community concerns regarding large-scale habitat plan development and implementation.
- c) Require the council to consider the recommendations of the DPC during a public hearing and to make findings regarding whether the recommendations will be incorporated into the project and whether the recommendations are consistent with the Delta Plan.

7) Make Other Miscellaneous Changes to the Delta Protection Act.

- a) Authorize the DPC to act as the facilitating agency for the implementation of a national heritage area designation in the Delta.
- b) Eliminate the Office of Planning and Research from the RMP review/comment process.
- c) Require the DPC, by January 1, 2012, to prepare and submit to the Legislature recommendations regarding the potential expansion of or change to the primary zone.
- d) Revise the requirements for the DPC's annual report to the Governor and Legislature:
  - i) *From* an evaluation of the effectiveness of *the RMP* in preserving agricultural lands, restoring delta habitat, improving levee protection and water quality, providing increased public access and recreational opportunities, and other functions as required.
  - ii) *To* An evaluation of the effectiveness of the *DPC* in undertaking its mandated functions, including:
    - (1) Determining the consistency of local general plans with the Delta Plan.
    - (2) Outcomes of appealed local land use decisions.
    - (3) Outcomes of reviews initiated by the commission.
    - (4) Facilitating regional economic development.
    - (5) Supporting other regional activities for the enhancement of Delta communities.

8) Create A New Sacramento-San Joaquin Delta Conservancy (Conservancy).

- a) Create in the Natural Resources Agency the Sacramento-San Joaquin Delta Conservancy,
- b) Charge the conservancy to work in collaboration and cooperation with local governments and interested parties.

- c) Require the conservancy to support efforts that advance both environmental protection and the economic well-being of Delta residents in a complementary manner.
  - d) Require the conservancy to undertake efforts to enhance public use and enjoyment of lands owned by the public.
- 9) Establish The Conservancy's Governing Board.
- a) Create a board that would consist of 11 voting members and five nonvoting members.
  - b) Designate the 11 voting members of the board:
    - i) The Secretary of the Natural Resources Agency, or designee.
    - ii) The Director of Finance, or designee.
    - iii) One member each of the board, or a designee, who is appointed by the Contra Costa, Sacramento, San Joaquin, Solano, and Yolo County Boards of Supervisors, who is a resident of each respective county.
    - iv) Two public members, appointed by the Governor.
    - v) One public member appointed by the Senate Committee on Rules.
    - vi) One public member appointed by the Speaker of the Assembly.
  - c) Designate the five nonvoting members:
    - i) A designee of the San Francisco Bay Conservation and Development Commission for coordination purposes.
    - ii) A designee of the State Coastal Conservancy for coordination purposes.
    - iii) A designee of the Suisun Resource Conservation District for coordination purposes.
    - iv) A Member of the Senate, appointed by the Senate Committee on Rules, who represents a district that encompasses a portion of the Delta.
    - v) A Member of the Assembly, appointed by the Speaker of the Assembly, who represents a district that encompasses a portion of the Delta.
  - d) Designate an additional four nonvoting liaison advisers who would serve in an advisory, nonvoting capacity:
    - i) One representative of the United States Fish and Wildlife Service.
    - ii) One representative of the United States National Marine Fisheries Service.
    - iii) One representative of the United States Bureau of Reclamation.
    - iv) One representative of the United States Army Corps of Engineers.
  - e) Establish the terms of the board members as follows:
    - i) The public member appointed by the Governor shall serve at his or her pleasure.
    - ii) The locally appointed members and alternates shall serve at the pleasure of the appointing board of supervisors.
    - iii) The public members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall serve for a term of four years, with a two-term limit.
    - iv) The Members of the Senate and Assembly shall serve for a term of four years, with a two-term limit.
  - f) Require the voting members of the board to elect a chairperson and vice chairperson, and other officers as necessary, from among the voting members.
    - i) The chairperson must be from among county supervisor members.

- ii) If the office of the chairperson or vice chairperson becomes vacant, a new chairperson or vice chairperson would be elected by the voting members of the board to serve for the remainder of the term.

10) Provide the Conservancy Administrative Powers, including.

- a) The authority to hire staff, adopt rules and procedures for conduct of the Conservancy's business, establish advisory committees, enter into contracts, etc.
- b) Requirement that Conservancy hold two regular meetings in the Delta or Rio Vista.

11) Establish and Limit The Conservancy's Powers & Duties.

- a) Limit the jurisdiction and activities of the conservancy to the Delta and Suisun Marsh except if the board makes all of the following findings:
  - i) Project implements the ecosystem goals of the Delta Plan.
  - ii) Project is consistent with the requirements of any applicable state and federal permits.
  - iii) Conservancy has given notice to and receives and reviews any comments from affected local jurisdictions and the DPC.
  - iv) Conservancy has given notice to and reviewed any comments received from any state conservancy where the project is located.
  - v) Project will provide significant benefits to the Delta.
- b) Establish the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury, which may provide funding for ecosystem restoration projects consistent with the Conservancy's strategic Plan or for "regional sustainability" consistent with the Delta Protection Commission's "Regional Sustainability and Land Use Plan."
- c) Authorize the Conservancy, subject to specified conditions, to acquire, manage and transfer interests in property and water rights, except for title in fee, which the Conservancy is barred from acquiring.
- d) Authorize the Conservancy to accept funding from a broad range of sources, including creation and management of endowments.
- e) Require the Conservancy to develop a strategic plan consistent with the Delta Plan, Delta Protection Commission's Regional Sustainability and Land Use Plan, the Central Valley Flood Protection Plan, the Suisun Marsh Preservation Act, and the Habitat Management, Preservation and Restoration Plan for the Suisun Marsh.
- f) Authorize the Conservancy to collaborate with other organizations.
- g) Prohibits the Conservancy from regulating land-use, exercising power over water rights held by others, or exercising the power of eminent domain.

12) Include Other Miscellaneous Provisions Regarding the Conservancy.

- a) Define terms and make numerous findings and declarations regarding the Delta.
- b) Require DPC to conduct meetings in compliance with Bagley-Keene Open Meeting Act.
- c) Reduce the number of required advisory committees from 3 to 1.

## *Comments*

### **A. Delta Protection Commission: Relationship to Council and Local Governments.**

#### DPC and the Delta Stewardship Council.

- **The Delta Plan:** This proposal would require the DPC develop “a proposal to protect, enhance, and sustain the unique and enduring cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving ecosystem.” The council would be required to consider the recommendations of the DPC, including the recommendations included in the RMP. If the council determined that a recommendation of the DPC is feasible and consistent with the objectives of the Delta Plan, the council would be required to adopt the recommendation.

However, what would happen if the DPC made a recommendation that was consistent with the *objectives* of the Delta Plan, but was in conflict with specific programs, projects, or elements of the Delta Plan? More specifically, what if the Delta Plan included the Bay-Delta Conservation Plan (BDCP) and the BDCP included a peripheral canal *to improve water supply reliability* (one of the objectives of the Delta Plan)? Further, what if the DPC, in order to “protect, enhance ...”, instead recommended more aggressive water recycling and ocean desalination to improve water supply reliability? As this proposal is written, the council would likely be required to dump the BDCP and instead go with the DPC recommendation.

- **The RMP:** This proposal would require the council to review the RMP for consistency with the Delta Plan and to approve the RMP. Two issues:

What would happen if the council were to find a proposed RMP was not consistent with the Delta Plan? Could the Council revise the RMP? Or would it be required to return the RMP to the DPC for direction for how it should be revised? This proposal is silent as to what would happen.

Also, this proposal does not give the council a specific time within which to approve or disapprove the RMP. Some sort of time requirement seems appropriate

- **Local/General Plans:** This proposal would revise the requirements for the DPC to review and approve local general plans and general plan amendments.

The principle requirement appears to be consistency with the RMP. It might make sense to also add a requirement that DPC also include determining consistency with the Delta Plan.

- **Criteria:** In a number of instances, this proposal requires the council to determine whether recommendations, proposals, or plans are consistent with the Delta Plan. However, it is silent as to what criteria the council would be required to use to determine such consistency.

One way to resolve this would be to establish specific criteria in statute. Another would be to direct the council to develop regulations to govern such consistency findings.

## DPC and Local Governments.

- **State/Federal Participation:** The Delta Vision Committee Implementation Report (a.k.a. the Chrisman Report), dated December 31, 2008, recommends “that the Delta Protection Commissioners include: five county supervisors, one from each Delta County selected by its Board of Supervisors, three representatives of Delta cities, selected by Councils of Governments, and three representatives of Delta Reclamation Districts or water agencies.” The Report also states that “consistent with the recommendation of the Task Force, the DPC may invite state and federal agencies to participate as non voting members.”

This measure would reduce the membership of the DPC from 23 to 15 members, removing many of the non-local government members and adding the Secretaries for the Natural Resources and Business, Transportation, and Housing Agencies. However, PSB 4 continues to have the non-local government commissioners as voting members.

- **Economic Elements:** This measure would require DPC to develop a RMP that includes information on the “economic elements of local general plans and other local economic efforts.” Typically cities and counties do not create “economic elements” in the general plans; however, they do often establish “economic development policies” for their communities that are reflected in the seven required elements of their general plan. The Conference Committee may wish to adjust this language for purposes of clarity.
- **Timing of DPC Review:** This measure would require all local governments, within 180 days from the date of the Council’s adoption of the Delta Plan *or* DPC’s adoption of the RMP, *whichever event occurs first*, to submit to the DPC proposed general plan amendments and land use elements to make their general plans consistent with the RMP with respect to land in the primary zone. Two issues:

How would a local government adopt a general plan amendment that is consistent with the RMP if the council adopts a Delta Plan before the DPC adopts the RMP? Or, what if the DPC adopts the RMP, but the council finds the RMP is not consistent with the Delta Plan? One solution would be for the trigger to be the council’s approval of the DPC’s RMP (this is similar to the requirement in existing law).

Also, there is no need to state that a local government must submit their amended general plan and land use element. Since the land use element is part of the general plan the proposal should only reference the submission of the general plan amendments.

- **Review Standards:** This proposal repeals the existing Section 29763.5, regarding the standards the Commission must use when reviewing and approving general plans and replaces it with two new sections, Sections 29763.1 and 29763.2. However, in separating the previous section into two sections, this proposal appears to have removed the requirement the DPC find that general plan and general plan amendments meet a series of environmental and other criteria. Instead, the proposal would require DPC only have to make written findings as to the potential impact of the proposed amendments on those criteria. The Conference Committee may wish to reestablish the link between those criteria and DPC’s ability to approve the proposed general plans and general plan amendments.

- **RMP Requirements:** This proposal repeals and replaces the existing Section 29760. That section establishes the requirements for the RMP. The new Section 29760 in this proposal appears to move away from an *outcomes based* set of requirements, such as “protect and preserve the cultural values” and “preserve and protect delta dependent fisheries”, and appears to move to an *included elements* approach, such as “public safety recommendations” and “economic elements of local general plans”.

The preprint includes a [PLACEHOLDER] for other required elements of the RMP. Consequently, the language is not clear as to what other changes the author intends to make to the requirements of the RMP.

Nonetheless, the proposed requirement for the RMP to include public safety, economic development, and flood management recommendations is, for some, a significant departure from the existing function of the RMP as a land use policy document. While the Delta Vision Strategic Plan recommended creating a regional economic development plan, it did not suggest transforming the RMP into such a plan. The Conference Committee may wish to consider whether the RMP should include these broader policies that local General Plans would then need to be consistent with.

## **B. Conservancy: Scope of Authority.**

- **Mission:** This proposal creates the Delta Conservancy as a “state agency to work in collaboration and cooperation with local governments and interested parties.” However, the proposal does not identify the overarching mission or purpose of the Conservancy. The Legislature created most state conservancies with the primary purpose of conserving, restoring or enhancing natural resources. Delta Vision recommends the creation of a conservancy “for implementing and coordinating Delta ecosystem enhancement and related revitalization projects.” The Conference Committee may wish to consider stating the mission or primary purpose for the Conservancy.
- **Connection to Council:** The Delta Vision Strategic Plan recommends specific responsibilities and legal authorities for the Conservancy, including consistency with the policies and plans adopted by the Council. In particular, it recommends that the conservancy be charged with “[c]oordinating state ecosystem-related and urban waterfront projects in the Delta, Suisun Marsh, and local plan areas. The Suisun Marsh area is regulated by the Bay Conservation and Development Commission, so integration of its authority and that of the Conservancy should be given first priority.”

This proposal includes two connections – consistency between the Conservancy's Strategic Plan and the Delta Plan (as well as several other plans), and discretion to act outside the Delta/Suisun Marsh if implementing the goals of the Delta Plan. It does not include any provision for the Conservancy to follow direction from the Council, integrate its actions with the Bay Conservation and Development Commission, or implement the ecosystem restoration part of the Delta Plan.

- **DPC/Conservancy Chair:** This proposal specifies that only a Delta County Supervisor may chair the Conservancy board. To some, this appears unduly restrictive with no apparent rational or policy basis. The Conference Committee may wish to consider whether all voting members of the board are co-equals without regard to geographic origin and, therefore, whether all voting member should be eligible to chair the board.



- **Terms/At Pleasure:** This proposal specifies that the Governor's and the county appointments to the Conservancy board are *at pleasure* appointments but the Legislative appointments, both public members and members of the Legislature, are for fixed 4-year terms. Moreover, this proposal states that the members of the Legislature may serve two terms. Two points:
  - 1) Pleasure appointments tend to lead appointees to closely follow the direction of their appointing power, instead of exercising independent judgment. It is not unheard of for pleasure appointees to be abruptly removed for making technically correct, but politically unpopular decisions. It is not clear why the Governor's appointees should serve at pleasure, but the Legislature's public appointees should serve fixed terms.
  - 2) While the proposal calls for Legislative members to serve fixed 4-year terms, those appointments do not necessarily align with legislative terms. This is especially true in the Assembly, where term limits allow members to serve only 6 years, making two 4-year term appointments impossible. The Conference Committee may wish to consider which appointments should be at pleasure and which should be fixed terms.
- **Board Hires:** This proposal requires the board to appoint an executive officer and employ other staff as necessary. It is unusual for a board to hire staff; the board typically hires the executive officer who then has hiring authority, as the executive officer would have day-to-day management of and provide direction to staff.
- **Land Acquisition:** This proposal authorizes the Conservancy to acquire an interest in real property. However, it prohibits the Conservancy from acquiring a fee interest (e.g., holding absolute ownership) of property.

All state conservancies, with the exception of the Sierra Nevada Conservancy, are authorized to acquire a fee interest in property; such authority constitutes one of the most important and fundamental conservation tools for entities whose primary mission is to conserve natural resources. Many view a Delta Conservancy as playing a critical role in the implementation of the Bay Delta Conservation Plan or ecosystem elements of the Delta Plan "...given the scope, urgency and need for effective integration among multiple ecosystem restoration efforts," as stated in the Delta Vision Committee's Implementation Report.

Previous versions of this proposal authorized the Conservancy to acquire a fee interest and transfer it within two years. As an alternative, this approach could be resurrected, but consideration should be given to allowing the Conservancy a longer period of time to transfer the interest, e.g. at least five years. The Conference Committee may wish to consider whether to grant the Conservancy authority to acquire a fee interest of property and if so, under what conditions if any.

Additionally, while this proposal expressly prohibits the Conservancy from acquiring a fee interest in property it is unclear whether grantees may do so. Section 32364 authorizes an entity to apply for a grant to acquire an interest in real property but does not specify whether this includes a fee interest. The Conference Committee may wish to consider clarifying that grantees have this authority.

- **In Lieu of Taxes:** This proposal requires a grant applicant wishing to purchase an interest in real property to demonstrate how payments in lieu of taxes, assessments, or charges otherwise due to local government will be provided. While this might address the concern



that certain land acquisitions may reduce or eliminate property tax assessments and thus county revenues, this appears to be an unprecedented requirement that may effectively stymie such acquisitions (and the goals of the Conservancy), especially if the funding mechanism (e.g., bonds) does not expressly permit or authorize such payments.

The above requirement is not sensitive to the fact that different acquisitions impact property tax assessments differently. According to the Civil Code, the creation of a conservation easement itself does not result in an automatic reduction in the assessed value of the property subject to the easement. Moreover, the conveyance of this interest does not generally constitute a change in ownership of the underlying property (only a change in ownership would trigger a reassessment).

At the same time, nothing in the bill authorizes the Conservancy to deny a grant application absent such a demonstration nor does the bill provide any criteria or guidance to the Conservancy when reviewing this provision. With respect to lands acquired for agricultural preservation, existing law requires the Coastal Conservancy to “take all feasible action to return [these lands] to private use or ownership.” If the Coastal Conservancy leases agricultural lands to a private individual, it may transfer 24 percent of the gross income to the county in which the lands are located. These requirements could serve as models for a Delta Conservancy.

### **C. Conservancy: Ecosystem Restoration & Economic Development.**

- **"Complementary":** This proposal requires the Conservancy to support efforts that advance both environmental protection and economic well-being in a complementary manner. It further lists examples of these efforts, including protection and enhancement of habitat, preservation of agriculture, promotion of Delta communities and economic vitality, and protection of water quality.

Because the above mandate requires the satisfaction of two objectives in a complementary fashion, a persuasive argument can be made that riparian restoration or protection of water quality, for example, may not advance the economic well-being of Delta residents. The Conference Committee may wish to consider setting a “primary” mission for the Conservancy, consistent with the other conservancies, for ecosystem restoration.

- **Public Use:** This proposal requires the Conservancy, when undertaking one of the above “efforts” to enhance public use and enjoyment of lands owned by the public. This subdivision is vague and could be interpreted as limiting the creation or enhancement of recreational opportunities to lands only owned by public agencies. If so, this could be unnecessarily restrictive.

#### Other Issues:

As the Conference Committee begins deliberating this bill, it also may want to consider technical amendments to address the following:

- Granting the following authorities to the Conservancy in order to maximize conservation or preservation opportunities and to ensure appropriate use of public resources or bond proceeds. One or more of the existing conservancies have these authorities.

- Authorize the Conservancy to require a grantee to enter into an agreement with the Conservancy on terms and conditions specified by the Conservancy.
  - Authorize the Conservancy to require a cost-share or local funding requirement for a grant, contingent upon, for example, the total amount of funding available, fiscal resources of the applicant, urgency of the project. The Conservancy should also be authorized to waive cost-share requirements.
  - Authorize the Conservancy to sell, rent, or exchange an interest in real property to a person or entity subject to appropriate terms and conditions (the bill only authorizes the Conservancy to improve, lease or transfer an interest).
  - Authorize the Conservancy to enter into an option to acquire an interest (with an appropriate cap). Proceeds from a sale or lease of lands should be deposited in the Conservancy Fund.
  - Authorize the Conservancy to fund or award grants for plans and feasibility studies consistent with its strategic plan or the Delta Plan. The bill only authorizes the Conservancy to award grants to facilitate “collaborative planning” efforts.
  - Authorize the Conservancy to seek repayment or reimbursement of funds granted on terms and conditions it deems appropriate. Proceeds of repayment shall be deposited in Conservancy Fund.
  - Exempt an acquisition of an interest in real property to the Property Acquisition Law, consistent with the Delta Vision Strategic Plan recommendations.
  - Require any funds over and above eligible or approved project or acquisition costs to be returned to the Conservancy and available for expenditure when appropriated by the Legislature.
  - Authorize the Conservancy to sue and be sued.
- Clarifying under existing law who is the responsible party for the appropriate environmental review of the RMP.
  - Assessing whether all the findings and declarations are necessary for aiding in determining Legislative intent regarding how the provisions of the proposal should be implemented.
  - This proposal has been heavily amended as it has evolved. It would benefit from double check references, eliminate redundant provisions, edit awkward phrases, and refine references, e.g., the *Regional Sustainability and Land Use Plan* cited in Section 32360 is undefined.

*The following policy committees collaborated in preparing this Summary & Comments: Assembly Local Government, Assembly Natural Resources, Assembly Water, Parks & Wildlife, Senate Local Government, and Senate Natural Resources and Water.*

## PREPRINT SENATE BILL No. 4

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**Proposed by Senator Wolk**

August 12, 2009

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An act to amend Sections 29702, 29725, 29727, 29733, 29735, 29735.1, 29738, 29741, 29751, 29752, 29754, 29756.5, 29765, 29771, and 29780 of, to add Sections 29703.5, 29722.5, 29728.5, 29759, 29761.6, 29763.1, 29763.2, 29763.3, 29773, 29773.5, and 29778.5 to, to add Division 22.3 (commencing with Section 32300) to, to repeal Sections 29762 and 29763.5 of, and to repeal and add Sections 29736, 29739, 29753, 29760, 29761, 29761.5, 29763, and 29764 of, the Public Resources Code, relating to Sacramento-San Joaquin Delta.

### LEGISLATIVE COUNSEL'S DIGEST

Preprint SB 4, as proposed, Wolk. Delta Protection Commission: Sacramento-San Joaquin Delta Conservancy.

(1) Existing law requires various state agencies to administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta. The Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992 (Delta Protection Act) creates the Delta Protection Commission and requires the commission to prepare and adopt a comprehensive long-term resource management plan for specified lands within the Sacramento-San Joaquin Delta. Existing law requires the Secretary of the Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill would revise and recast the provisions of the Delta Protection Act to, among other things, reduce the number of members to 15 members, as specified. The bill would require the commission to appoint



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at least one advisory committee consisting of representatives from specified entities to provide input regarding the diverse interests within the Delta. The bill would require the commission to adopt, not later than July 1, 2011, a comprehensive resources management plan containing specified elements and would require the commission to update the plan every 5 years. The resources management plan would be approved by a council that would be created pursuant to \_\_\_\_\_ of the 2009–10 Regular Session and would be implemented by the commission.

The bill would require all general plans of cities and counties within the Delta to be consistent with the resources management plan, as determined by the commission, thereby imposing a state-mandated local program. The bill would revise and recast the process by which local governments are required to submit proposed general plan amendments to ensure that the general plan is consistent with the resources management plan. The bill would require the commission to prepare and submit to the Legislature, by January 1, 2012, recommendations on the potential expansion of or change to the primary zone.

The bill would require the commission to develop a regional economic development plan for the Delta region in accordance with specified requirements. The bill would establish the Delta Investment Fund in the State Treasury. Moneys in the fund, upon appropriation by the Legislature, would be required to be expended by the commission to implement the regional economic development plan.

The bill would also require the commission to prepare, for consideration and incorporation by the Delta Stewardship Council into the Delta Plan adopted pursuant to \_\_\_\_\_ at the 2009–10 Regular Session, a proposal to protect, enhance, and sustain the unique and enduring cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving ecosystem.

The bill would establish in the Natural Resources Agency the Sacramento-San Joaquin Delta Conservancy. The conservancy would be required to support efforts that advance environmental protection and the economic well-being of Delta residents. The bill would specify the composition of the conservancy and grant certain authority to the conservancy, including the authority to acquire real property interests from willing sellers or transferors. However, the conservancy would be prohibited from acquiring a fee interest in real property. The conservancy would be required to prepare and adopt a strategic plan to achieve the goals of the conservancy. The strategic plan would be

required to be consistent with the Delta Plan adopted pursuant to \_\_\_\_\_ of the 2009–10 Regular Session and certain other plans. The bill would establish the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury. Moneys in the fund would be available, upon appropriation, to finance projects, including ecosystem restoration and regional sustainability projects, within and outside the Delta and Suisun Marsh if certain requirements are met.

These provisions would only become operative if \_\_\_\_\_ of the 2009–10 Regular Session of the Legislature are each enacted and become effective on or before January 1, 2010.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

- 1 SECTION 1. Section 29702 of the Public Resources Code is
- 2 amended to read:
- 3 29702. The Legislature further finds and declares that the basic
- 4 goals of the state for the ~~delta~~ Delta are the following:
- 5 (a) *Achieve the coequal goals of assuring a reliable water supply*
- 6 *for California and protecting, restoring, and enhancing the Delta*
- 7 *ecosystem and the unique cultural, recreational, and agricultural*
- 8 *values of the Delta as an evolving place.*
- 9 ~~(a)~~
- 10 (b) Protect, maintain, and, where possible, enhance and restore
- 11 the overall quality of the delta environment, including, but not
- 12 limited to, agriculture, wildlife habitat, and recreational activities.
- 13 ~~(b) Assure~~
- 14 (c) *Ensure* orderly, balanced conservation and development of
- 15 delta land resources.
- 16 ~~(c)~~
- 17 (d) Improve flood protection by structural and nonstructural
- 18 means to ensure an increased level of public health and safety.

SEC. 2. Section 29703.5 is added to the Public Resources Code, to read:

29703.5. The Legislature further finds and declares both of the following:

(a) The Delta Protection Commission created pursuant to Section 29735 provides an existing forum for Delta residents to engage in decisions regarding actions to recognize and enhance the unique cultural, recreational, and agricultural resources of the Delta. As such, the commission is the appropriate agency to identify and provide recommendations to the Delta Stewardship Council on methods of preserving the Delta as an evolving place as the Delta Stewardship Council develops and implements the Delta Plan.

(b) There is a need for the five Delta counties to establish and implement a resources management plan for the Delta and for the Delta Stewardship Council to consider that plan and recommendations of the commission in the adoption of the Delta Plan.

SEC. 3. Section 29722.5 is added to the Public Resources Code, to read:

29722.5. “Delta Plan” means the plan adopted by the Delta Stewardship Council pursuant to Section 85300 of the Water Code.

SEC. 4. Section 29725 of the Public Resources Code is amended to read:

29725. “Local government” means the Counties of Contra Costa, Sacramento, San Joaquin, Solano, and Yolo, and the Cities of Sacramento, Stockton, Tracy, Antioch, Pittsburg, Isleton, Lathrop, Brentwood, ~~Rio Vista~~, West Sacramento, and Oakley, and any other cities that may be incorporated in the future in the primary zone.

SEC. 5. Section 29727 of the Public Resources Code is amended to read:

29727. “Port” means the Port of Sacramento and the Port of Stockton, including all the land owned or leased by those ports *or potential sites identified in the Delta county general plans as of the date of the amendment of this section at the 2009–10 Regular Session of the Legislature and otherwise authorized by law.*

SEC. 6. Section 29728.5 is added to the Public Resources Code, to read:

29728.5. “Resources management plan” means the plan adopted by the commission pursuant to Section 29760.



SEC. 7. Section 29733 of the Public Resources Code is amended to read:

29733. “Unincorporated towns” means the communities of Walnut Grove, Clarksburg, Courtland, Hood, Locke, *Knightsen*, *Collinsville*, and Ryde.

SEC. 8. Section 29735 of the Public Resources Code is amended to read:

29735. There is hereby created the Delta Protection Commission consisting of ~~23~~ 15 members as follows:

(a) One member of the board of supervisors, or his or her designee, of each of the five counties within the ~~delta~~ *Delta* whose supervisorial district is within the primary zone shall be appointed by the board of supervisors of ~~the county~~ *each of those respective counties*.

(b) (1) Three elected city council members shall be selected and appointed by city selection committees, from ~~regional and area councils of government~~ *the appropriate regions specified below*, one in each of the following areas:

(A) One from the north ~~delta~~ *Delta*, ~~consisting of~~ *from either the Counties County of Yolo and or the County of Sacramento, on a rotating basis*.

(B) One from the south ~~delta~~ *Delta*, consisting of the County of San Joaquin.

(C) One from the west ~~delta~~ *Delta*, ~~consisting of~~ *from either the Counties County of Contra Costa and or the County of Solano, on a rotating basis*.

(2) A city council member may select a designee for purposes of paragraph (1).

(3) *Notwithstanding Section 29736, the term of office of the members selected pursuant to this subdivision shall be two years.*

(c) ~~(1)~~ One member each from the board of directors of ~~five~~ *three* different reclamation districts that are located within the primary zone who are residents of the ~~delta~~ *Delta*, and who are elected by the trustees of reclamations districts ~~within the following areas: pursuant to paragraphs (1), (2), and (3). Each reclamation district may nominate one director to be a member. The member from an area shall be selected from among the nominees by a majority vote of the reclamation districts in that area. The member may select a designee for this purpose. For the purposes of this section, each reclamation district shall have one vote.~~



1     ~~(A) Two members~~

2     ~~(1) One member from the area of the North Delta Water Agency~~  
3     ~~as described in Section 9.1 of the North Delta Water Agency Act~~  
4     ~~(Chapter 283 of the Statutes of 1973), provided at least one member~~  
5     ~~is also a member of the Delta Citizens Municipal Advisory Council.~~

6     ~~(B)~~

7     ~~(2) One member from an area including the west-delta Delta~~  
8     ~~consisting of the area of Contra Costa County within the-delta~~  
9     ~~Delta and the Central Delta Water Agency as described in Section~~  
10    ~~9.1 of the Central Delta Water Agency Act (Chapter 1133 of the~~  
11    ~~Statutes of 1973).~~

12    ~~(C) One member from the area of the Central Delta Water~~  
13    ~~Agency as described in Section 9.1 of the Central Delta Water~~  
14    ~~Agency Act (Chapter 1133 of the Statutes of 1973).~~

15    ~~(D)~~

16    ~~(3) One member from the area of the South Delta Water Agency~~  
17    ~~as described in Section 9.1 of the South Delta Water Agency Act~~  
18    ~~(Chapter 1089 of the Statutes of 1973).~~

19    ~~(2) Each reclamation district may nominate one director to be~~  
20    ~~a member. The member from an area shall be selected from among~~  
21    ~~the nominees by a majority vote of the reclamation districts in that~~  
22    ~~area. The member may select a designee for this purpose. For~~  
23    ~~purposes of this section, each reclamation district shall have one~~  
24    ~~vote. The north-delta area shall conduct separate votes to select~~  
25    ~~each of its two members.~~

26    ~~(d) The Director of Parks and Recreation, or the director's sole~~  
27    ~~designee.~~

28    ~~(e) The Director of Fish and Game, or the director's sole~~  
29    ~~designee.~~

30    ~~(f)~~

31    ~~(d) The Secretary of Food and Agriculture, or the secretary's~~  
32    ~~sole designee.~~

33    ~~(g)~~

34    ~~(e) The executive officer of the State Lands Commission, or the~~  
35    ~~executive officer's sole designee.~~

36    ~~(h) The Director of Boating and Waterways, or the director's~~  
37    ~~sole designee.~~

38    ~~(i) The Director of Water Resources, or the director's sole~~  
39    ~~designee.~~

1 ~~(j) The public member of the California Bay-Delta Authority~~  
2 ~~who represents the delta region or his or her designee.~~

3 ~~(k) (1) The Governor shall appoint three members and three~~  
4 ~~alternates from the general public who are delta residents or delta~~  
5 ~~landowners, as follows:~~

6 ~~(A) One member and one alternate shall represent the interests~~  
7 ~~of production agriculture with a background in promoting the~~  
8 ~~agricultural viability of delta farming.~~

9 ~~(B) One member and one alternate shall represent the interests~~  
10 ~~of conservation of wildlife and habitat resources of the delta region~~  
11 ~~and ecosystem.~~

12 ~~(C) One member and one alternate shall represent the interests~~  
13 ~~of outdoor recreational opportunities, including, but not limited~~  
14 ~~to, hunting and fishing.~~

15 ~~(2) An alternate may serve in the absence of a member.~~

16 ~~(f) The Secretary of the Natural Resources Agency, or his or~~  
17 ~~her sole designee.~~

18 ~~(g) The Secretary of Business, Transportation and Housing, or~~  
19 ~~his or her sole designee.~~

20 SEC. 9. Section 29735.1 of the Public Resources Code is  
21 amended to read:

22 29735.1. (a) A member of the commission described in  
23 subdivision (a), ~~(b), (c), or (j)~~ of Section 29735 may, subject to  
24 the confirmation of his or her appointing power, appoint an  
25 alternate to represent him or her at a commission meeting. An  
26 alternate may serve prior to confirmation for a period not to exceed  
27 90 days from the date of appointment, unless and until confirmation  
28 is denied.

29 (b) The alternate shall serve at the pleasure of the member who  
30 appoints him or her and shall have all of the powers and duties of  
31 a member of the commission, except that the alternate shall only  
32 participate and vote in a meeting in the absence of the member  
33 who appoints him or her. All provisions of law relating to conflicts  
34 of interest that are applicable to a member shall apply to an  
35 alternate. ~~Whenever~~ *If* a member has, or is known to have, a  
36 conflict of interest on any matter, the member's alternate is  
37 ineligible to vote on that matter.

38 SEC. 10. Section 29736 of the Public Resources Code is  
39 repealed.

1     ~~29736. The term of office of the members of the commission~~  
2 ~~shall be for four years, and a member may serve for one or more~~  
3 ~~consecutive terms.~~

4     SEC. 11. Section 29736 is added to the Public Resources Code,  
5 to read:

6     29736. The appointed members of the commission shall serve  
7 at the pleasure of their appointing entities.

8     SEC. 12. Section 29738 of the Public Resources Code is  
9 amended to read:

10    29738. ~~The position office of a an appointed member of the~~  
11 ~~commission shall be considered is~~ vacated upon the loss of any  
12 qualification required for appointment, and in that event the  
13 appointing authority shall appoint a successor within 30 days of  
14 the occurrence of the vacancy. ~~Upon the occurrence of the first~~  
15 ~~vacancy among any of the members listed in subdivision (d), (e),~~  
16 ~~(f), (g), (h), or (i) of Section 29735, the Director of Conservation~~  
17 ~~or the director's designee shall serve as the successor member.~~

18    SEC. 13. Section 29739 of the Public Resources Code is  
19 repealed.

20    ~~29739. The commission shall elect from its own members a~~  
21 ~~chairperson and vice chairperson whose terms of office shall be~~  
22 ~~two years, and who may be reelected. If a vacancy occurs in either~~  
23 ~~office, the commission shall fill the vacancy for the unexpired~~  
24 ~~term.~~

25    SEC. 14. Section 29739 is added to the Public Resources Code,  
26 to read:

27    29739. (a) The commission, during the first meeting of the  
28 commission after January 1, 2010, shall elect from among the  
29 members identified in subdivision (a) of Section 29735 a  
30 chairperson who shall serve for one year.

31    (b) Subsequent chairpersons shall serve for two years and shall  
32 be elected from among the members identified in subdivision (a)  
33 of Section 29735.

34    (c) The chairperson shall serve as a voting member of the Delta  
35 Stewardship Council.

36    SEC. 15. Section 29741 of the Public Resources Code is  
37 amended to read:

38    29741. The time and place of the first meeting of the  
39 commission *after January 1, 2010*, shall be prescribed by the  
40 Governor, but in no event shall it be scheduled for a date later than

1 January 31, ~~1993~~ 2010. All meetings after the first meeting shall  
2 be held in a city within the ~~delta~~ Delta.

3 SEC. 16. Section 29751 of the Public Resources Code is  
4 amended to read:

5 29751. A majority of the voting members of the commission  
6 shall constitute a quorum for the transaction of the business of the  
7 commission. A majority vote of the voting members ~~present~~ shall  
8 be required to take action with respect to any matter unless  
9 otherwise specified in this division. The vote of each member shall  
10 be individually recorded.

11 SEC. 17. Section 29752 of the Public Resources Code is  
12 amended to read:

13 29752. The commission shall adopt its own rules, regulations,  
14 and procedures necessary for its organization and operation, *and*  
15 *shall conduct its meetings in compliance with the Bagley-Keene*  
16 *Open Meeting Act (Article 9 (commencing with Section 11120) of*  
17 *Chapter 1 of Part 1 of Division 3 of Title 2 of the Government*  
18 *Code).*

19 SEC. 18. Section 29753 of the Public Resources Code is  
20 repealed.

21 ~~29753. The commission shall appoint agricultural,~~  
22 ~~environmental, and recreational advisory committees for the~~  
23 ~~purpose of providing the commission with timely comments,~~  
24 ~~advice, and information. The commission may appoint committees~~  
25 ~~from its membership or may appoint additional advisory~~  
26 ~~committees from members of other interested public agencies and~~  
27 ~~private groups. The commission shall seek advice and~~  
28 ~~recommendations from advisory committees appointed by local~~  
29 ~~government which are involved in subject matters affecting the~~  
30 ~~delta.~~

31 SEC. 19. Section 29753 is added to the Public Resources Code,  
32 to read:

33 29753. (a) The commission shall appoint at least one advisory  
34 committee to provide recommendations regarding the diverse  
35 interests within the Delta. At a minimum, the advisory committees  
36 shall include representatives of state agencies and other  
37 stakeholders with interests in the Delta's ecosystem, water supply,  
38 and socioeconomic sustainability, including, but not limited to, its  
39 recreational, agricultural, flood control, environmental, and water  
40 resources, and state, local, and utility infrastructure. The

1 commission shall encourage participation of various federal  
2 agencies, including the United States Bureau of Reclamation, the  
3 United States Fish and Wildlife Service, the United States Army  
4 Corps of Engineers, and others as appropriate.

5 (b) The commission may appoint committees from its  
6 membership or may appoint additional advisory committees from  
7 members of other interested public agencies and private groups.

8 (c) The commission shall seek advice and recommendations  
9 from advisory committees appointed by local government that are  
10 involved in subject matters affecting the Delta.

11 SEC. 20. Section 29754 of the Public Resources Code is  
12 amended to read:

13 29754. The commission shall establish and maintain an office  
14 within the ~~delta~~ *Delta or the City of Rio Vista*, and for this purpose  
15 the commission may rent or own property and equipment. Any  
16 rule, regulation, procedure, plan, or other record of the commission  
17 which is of such a nature as to constitute a public record under  
18 state law shall be available for inspection and copying during  
19 regular office hours.

20 SEC. 21. Section 29756.5 of the Public Resources Code is  
21 amended to read:

22 29756.5. The commission may act as the facilitating agency  
23 for the implementation of any joint habitat restoration or  
24 enhancement programs located within the primary zone of the  
25 ~~delta~~ *Delta, including, but not limited to, a national heritage area*  
26 *designation in the Delta.*

27 SEC. 22. Section 29759 is added to the Public Resources Code,  
28 to read:

29 29759. (a) The commission shall develop a regional economic  
30 development plan for the Delta region in accordance with Section  
31 85301 of the Water Code.

32 (b) The policies in the regional economic development plan  
33 shall be based on local plans.

34 (c) The regional economic development plan shall identify ways  
35 to encourage recreational investment along the key river corridors,  
36 as appropriate.

37 SEC. 23. Section 29760 of the Public Resources Code is  
38 repealed.

39 ~~29760. (a) Not later than October 1, 1994, the commission~~  
40 ~~shall prepare and adopt, by a majority vote of the membership of~~

1 the commission, and thereafter review and maintain, a  
2 comprehensive long-term resource management plan for land uses  
3 within the primary zone of the delta. The resource management  
4 plan shall consist of the map of the primary zone and text or texts  
5 setting forth a description of the needs and goals for the delta and  
6 a statement of the policies, standards, and elements of the resource  
7 management plan.

8 (b) The resource management plan shall meet the following  
9 requirements:

10 (1) Protect and preserve the cultural values and economic vitality  
11 that reflect the history, natural heritage, and human resources of  
12 the delta.

13 (2) Conserve and protect the quality of renewable resources.

14 (3) Preserve and protect agricultural viability.

15 (4) Restore, improve, and manage levee systems by promoting  
16 strategies, including, but not limited to, methods and procedures  
17 which advance the adoption and implementation of coordinated  
18 and uniform standards among governmental agencies for the  
19 maintenance, repair, and construction of both public and private  
20 levees.

21 (5) Preserve and protect delta dependent fisheries and their  
22 habitat.

23 (6) Preserve and protect riparian and wetlands habitat, and  
24 promote and encourage a net increase in both the acreage and  
25 values of those resources on public lands and through voluntary  
26 cooperative arrangements with private property owners.

27 (7) Preserve and protect the water quality of the delta, both for  
28 instream purposes and for human use and consumption.

29 (8) Preserve and protect open-space and outdoor recreational  
30 opportunities.

31 (9) Preserve and protect private property interests from  
32 trespassing and vandalism.

33 (10) Preserve and protect opportunities for controlled public  
34 access and use of public lands and waterways consistent with the  
35 protection of natural resources and private property interests.

36 (11) Preserve, protect, and maintain navigation.

37 (12) Protect the delta from any development that results in any  
38 significant loss of habitat or agricultural land.

39 (13) Promote strategies for the funding, acquisition, and  
40 maintenance of voluntary cooperative arrangements, such as

1 conservation easements, between property owners and conservation  
2 groups that protect wildlife habitat and agricultural land, while not  
3 impairing the integrity of levees.

4 ~~(14) Permit water reservoir and habitat development that is~~  
5 ~~compatible with other uses.~~

6 ~~(e) The resource management plan shall not supersede the~~  
7 ~~authority of local governments over areas within the secondary~~  
8 ~~zone.~~

9 ~~(d) To facilitate, in part, the requirements specified in paragraphs~~  
10 ~~(8), (9), (10), and (11) of subdivision (b), the commission shall~~  
11 ~~include in the resource management plan, in consultation with all~~  
12 ~~law enforcement agencies having jurisdiction in the delta, a strategy~~  
13 ~~for the implementation of a coordinated marine patrol system~~  
14 ~~throughout the delta that will improve law enforcement and~~  
15 ~~coordinate the use of resources by all jurisdictions to ensure an~~  
16 ~~adequate level of public safety. The strategic plan shall identify~~  
17 ~~resources to implement that coordination. The commission shall~~  
18 ~~have no authority to abrogate the existing authority of any law~~  
19 ~~enforcement agency.~~

20 ~~(e) To the extent that any of the requirements specified in this~~  
21 ~~section are in conflict, nothing in this division shall deny the right~~  
22 ~~of the landowner to continue the agricultural use of the land.~~

23 SEC. 24. Section 29760 is added to the Public Resources Code,  
24 to read:

25 29760. (a) Not later than July 1, 2011, the commission shall  
26 prepare and adopt, by a majority vote of the membership of the  
27 commission, a comprehensive resources management plan. The  
28 resources management plan shall include information and  
29 recommendations that inform the Delta Stewardship Council's  
30 policies regarding the socioeconomic sustainability of the Delta  
31 region.

32 (b) The resources management plan shall include, but not be  
33 limited to, all of the following:

34 (1) Public safety recommendations, such as flood protection  
35 recommendations.

36 (2) Economic elements of local general plans and other local  
37 economic efforts, including recommendations on continued  
38 socioeconomic sustainability of agriculture and its infrastructure  
39 and legacy communities in the Delta.



1 (3) Comments and recommendations to the Department of Water  
2 Resources concerning its periodic update of the flood management  
3 plan for the Delta.

4 (4) [PLACEHOLDER].

5 SEC. 25. Section 29761 of the Public Resources Code is  
6 repealed.

7 ~~29761. The Director of the Office of Planning and Research~~  
8 ~~shall submit comments and recommendations on the resource~~  
9 ~~management plan for the commission's consideration, prior to the~~  
10 ~~plan's adoption.~~

11 SEC. 26. Section 29761 is added to the Public Resources Code,  
12 to read:

13 29761. The commission shall adopt, by a majority vote, the  
14 resources management plan and each plan update after at least  
15 three public hearings, with at least one hearing held in a community  
16 in the north Delta, one in the south Delta, and one in the west Delta.

17 SEC. 27. Section 29761.5 of the Public Resources Code is  
18 repealed.

19 ~~29761.5. Not later than January 7, 1995, the commission shall~~  
20 ~~transmit copies of the resource management plan to the Governor.~~  
21 ~~Copies of the resource management plan shall be made available,~~  
22 ~~upon request, to Members of the Legislature.~~

23 SEC. 28. Section 29761.5 is added to the Public Resources  
24 Code, to read:

25 29761.5. (a) The commission shall update the resources  
26 management plan every five years on or before December 31 in  
27 years ending in six or one.

28 (b) The commission shall transmit copies of the resources  
29 management plan and its revisions to the Governor, Legislature,  
30 and Delta Stewardship Council within 60 days of adoption or  
31 revision. The Delta Stewardship Council shall review the resources  
32 management plan for consistency with the Delta Plan and approve  
33 the resources management plan. The approved resources  
34 management plan shall be implemented by the Delta Protection  
35 Commission.

36 SEC. 29. Section 29761.6 is added to the Public Resources  
37 Code, to read:

38 29761.6. (a) The commission shall develop, for consideration  
39 and incorporation in the Delta Plan by the council, a proposal to  
40 protect, enhance, and sustain the unique and enduring cultural,

1 historical, recreational, agricultural, and economic values of the  
2 Delta as an evolving ecosystem. For the purpose of carrying out  
3 this subdivision, the commission shall incorporate into the proposal  
4 the relevant strategies described in, and consider the actions  
5 recommended by, the strategic plan.

6 (b) (1) The commission shall include in the proposal a plan to  
7 establish state and federal designation of the Delta as a place of  
8 special significance, which may include application for a federal  
9 designation of the Delta as a National Heritage Area.

10 (2) The commission shall include in the proposal a regional  
11 economic plan, for submission to the council, to support increased  
12 investment in agriculture, recreation, tourism, and other resilient  
13 land uses in the Delta. The regional economic plan shall include  
14 detailed recommendations for the administration of the Delta  
15 Investment Fund created by Section 29778.5.

16 (c) For the purposes of assisting the commission in its  
17 preparation of the proposal, both of the following actions shall be  
18 undertaken:

19 (1) The Department of Parks and Recreation shall prepare a  
20 proposal, for submission to the commission, to expand within the  
21 Delta the network of state recreation areas, combining existing  
22 and newly designated areas. The proposal may incorporate  
23 appropriate aspects of any existing plans, including the Central  
24 Valley Vision Implementation Plan adopted by the Department of  
25 Parks and Recreation.

26 (2) The Department of Food and Agriculture shall prepare a  
27 proposal, for submission to the commission, to establish market  
28 incentives and infrastructure to protect and enhance the economic  
29 and public values of Delta agriculture.

30 (d) The commission shall submit the proposal developed  
31 pursuant to subdivision (a) to the council, and the council may  
32 approve and incorporate the proposal into the Delta Plan.

33 (e) The council shall take into consideration the  
34 recommendations of the commission, including the  
35 recommendations included in the resources management plan. If  
36 the council determines that a recommendation of the commission  
37 is feasible and consistent with the objectives of the Delta Plan and  
38 the purposes of this division, the council shall adopt the  
39 recommendation.

1 SEC. 30. Section 29762 of the Public Resources Code is  
2 repealed.

3 ~~29762. The commission shall adopt, by a majority vote of the~~  
4 ~~membership of the commission, the resource management plan~~  
5 ~~after at least three public hearings, with at least one hearing held~~  
6 ~~in a city in the north delta, the south delta, and the west delta.~~

7 SEC. 31. Section 29763 of the Public Resources Code is  
8 repealed.

9 ~~29763. Within 180 days from the date of the adoption of the~~  
10 ~~resource management plan or any amendments, changes, or~~  
11 ~~updates, to the resource management plan by the commission, all~~  
12 ~~local governments shall submit to the commission proposed~~  
13 ~~amendments that will cause their general plans to be consistent~~  
14 ~~with the criteria in Section 29763.5 with respect to land located~~  
15 ~~within the primary zone.~~

16 SEC. 32. Section 29763 is added to the Public Resources Code,  
17 to read:

18 29763. Within 180 days from the date of the Delta Stewardship  
19 Council's adoption of the Delta Plan or the commission's adoption  
20 of the resources management plan, whichever event occurs first,  
21 all local governments shall submit to the commission proposed  
22 general plan amendments and land use elements to make their  
23 general plans consistent with the resources management plan with  
24 respect to land use within the primary zone. Within 180 days of  
25 any amendments, changes, or updates to those general plans or  
26 land use elements, local governments shall submit to the  
27 commission proposed changes or updates to those general plans  
28 or land use elements of the Delta Plan and the resources  
29 management plan with respect to land use within the primary zone.

30 SEC. 33. Section 29763.1 is added to the Public Resources  
31 Code, to read:

32 29763.1. The commission shall act on proposed local  
33 government general plan amendments within 60 days from the  
34 date of submittal of the proposed amendments. The commission  
35 shall approve the proposed general plan amendments by a majority  
36 vote of the commission membership only after making a written  
37 finding that the proposed amendments are consistent with and in  
38 furtherance of the resources management plan, based on substantial  
39 evidence in the record.

SEC. 34. Section 29763.2 is added to the Public Resources Code, to read:

29763.2. In reviewing local government general plans or general plan amendments, the commission shall make written findings as to the potential impact of the proposed amendments, to the extent that those impacts will not increase requirements or restrictions upon agricultural practices in the primary zone, based on substantial evidence in the record, as follows:

(a) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in wetland or riparian loss.

(b) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in the degradation of water quality.

(c) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in increased nonpoint source pollution.

(d) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in the degradation or reduction of Pacific Flyway habitat.

(e) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in reduced public access, provided the access does not infringe on private property rights.

(f) The general plan, and any development approved or proposed that is consistent with the general plan, will not expose the public to increased flood hazards.

(g) The general plan, and any development approved or proposed that is consistent with the general plan, will not adversely impact agricultural lands or increase the potential for vandalism, trespass, or the creation of public or private nuisances on public or private land.

(h) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in the degradation or impairment of levee integrity.

(i) The general plan, and any development approved or proposed that is consistent with the general plan, will not adversely impact navigation.

(j) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in any

1 increased requirements or restrictions upon agricultural practices  
2 in the primary zone.

3 SEC. 35. Section 29763.3 is added to the Public Resources  
4 Code, to read:

5 29763.3. If the commission finds that the general plan is not  
6 consistent with the resources management plan, the commission  
7 shall remand the general plan back to the originating local  
8 government with findings, based on substantial evidence in the  
9 record and as approved by the commission, on items to be  
10 addressed. The local government shall have 120 days to make  
11 changes and resubmit the revised general plan to the commission  
12 for review pursuant to Section 29763.

13 SEC. 36. Section 29763.5 of the Public Resources Code is  
14 repealed.

15 ~~29763.5. The commission shall act on proposed local~~  
16 ~~government general plan amendments within 60 days from the~~  
17 ~~date of submittal of the proposed amendments. The commission~~  
18 ~~shall approve the proposed general plan amendments by a majority~~  
19 ~~vote of the commission membership, with regard to lands within~~  
20 ~~the primary zone, only after making all of the following written~~  
21 ~~findings as to the potential impact of the proposed amendments;~~  
22 ~~to the extent that those impacts will not increase requirements or~~  
23 ~~restrictions upon agricultural practices in the primary zone, based~~  
24 ~~on substantial evidence in the record:~~

25 ~~(a) The general plan, and any development approved or proposed~~  
26 ~~that is consistent with the general plan, are consistent with the~~  
27 ~~resource management plan.~~

28 ~~(b) The general plan, and any development approved or proposed~~  
29 ~~that is consistent with the general plan, will not result in wetland~~  
30 ~~or riparian loss.~~

31 ~~(c) The general plan, and development approved or proposed~~  
32 ~~that is consistent with the general plan, will not result in the~~  
33 ~~degradation of water quality.~~

34 ~~(d) The general plan, and any development approved or proposed~~  
35 ~~that is consistent with the general plan, will not result in increased~~  
36 ~~nonpoint source pollution.~~

37 ~~(e) The general plan, and any development approved or proposed~~  
38 ~~that is consistent with the general plan, will not result in the~~  
39 ~~degradation or reduction of Pacific Flyway habitat.~~

1 (f) ~~The general plan, and any development approved or proposed~~  
2 ~~that is consistent with the general plan, will not result in reduced~~  
3 ~~public access, provided the access does not infringe on private~~  
4 ~~property rights.~~

5 (g) ~~The general plan, and any development approved or proposed~~  
6 ~~that is consistent with the general plan, will not expose the public~~  
7 ~~to increased flood hazard.~~

8 (h) ~~The general plan, and any development approved or proposed~~  
9 ~~that is consistent with the general plan, will not adversely impact~~  
10 ~~agricultural lands or increase the potential for vandalism, trespass,~~  
11 ~~or the creation of public or private nuisances on public or private~~  
12 ~~land.~~

13 (i) ~~The general plan, and any development approved or proposed~~  
14 ~~that is consistent with the general plan, will not result in the~~  
15 ~~degradation or impairment of levee integrity.~~

16 (j) ~~The general plan, and any development approved or proposed~~  
17 ~~that is consistent with the general plan, will not adversely impact~~  
18 ~~navigation.~~

19 (k) ~~The general plan, and any development approved or proposed~~  
20 ~~that is consistent with the general plan, will not result in any~~  
21 ~~increased requirements or restrictions upon agricultural practices~~  
22 ~~in the primary zone.~~

23 SEC. 37. Section 29764 of the Public Resources Code is  
24 repealed.

25 ~~29764. This division does not confer any permitting authority~~  
26 ~~upon the commission or require any local government to conform~~  
27 ~~their general plan, or land use entitlement decisions, to the resource~~  
28 ~~management plan, except with regard to lands within the primary~~  
29 ~~zone. The resource management plan does not preempt local~~  
30 ~~government general plans for lands within the secondary zone.~~

31 SEC. 38. Section 29764 is added to the Public Resources Code,  
32 to read:

33 29764. Land use authority granted to the commission by this  
34 division is limited to the primary zone, and shall not preempt local  
35 government general plans for lands within the secondary zone.

36 SEC. 39. Section 29765 of the Public Resources Code is  
37 amended to read:

38 29765. (a) Prior to the commission approving the general plan  
39 amendments of the local government, the local government may  
40 approve development within the primary zone only after making

1 all of the following written findings on the basis of substantial  
2 evidence in the record:

3 ~~(a)~~

4 (1) The development will not result in wetland or riparian loss.

5 ~~(b)~~

6 (2) The development will not result in the degradation of water  
7 quality.

8 ~~(c)~~

9 (3) The development will not result in increased nonpoint source  
10 pollution or soil erosion, including subsidence or sedimentation.

11 ~~(d)~~

12 (4) The development will not result in degradation or reduction  
13 of Pacific Flyway habitat.

14 ~~(e)~~

15 (5) The development will not result in reduced public access,  
16 provided that access does not infringe upon private property rights.

17 ~~(f)~~

18 (6) The development will not expose the public to increased  
19 flood hazards.

20 ~~(g)~~

21 (7) The development will not adversely impact agricultural  
22 lands or increase the potential for vandalism, trespass, or the  
23 creation of public or private nuisances on private or public land.

24 ~~(h)~~

25 (8) The development will not result in the degradation or  
26 impairment of levee integrity.

27 ~~(i)~~

28 (9) The development will not adversely impact navigation.

29 ~~(j)~~

30 (10) The development will not result in any increased  
31 requirements or restrictions upon agricultural practices in the  
32 primary zone.

33 *(b) Subsequent to the approval by the commission of a general*  
34 *plan or general plan amendment, additional development shall*  
35 *not occur in the primary zone of the Delta unless the relevant*  
36 *proposed amendment to the general plan is determined to be*  
37 *consistent with the resources management plan.*

38 SEC. 40. Section 29771 of the Public Resources Code is  
39 amended to read:



1     29771. After a hearing on an appealed action *pursuant to*  
2     *subdivision (a) or (b) of Section 29770*, the commission shall either  
3     deny the appeal or remand the matter to the local government or  
4     local agency for reconsideration, after making specific findings.  
5     Upon remand, the local government or local agency shall modify  
6     the appealed action and resubmit the matter for review to the  
7     commission. A proposed action appealed pursuant to this section  
8     shall not be effective until the commission has adopted written  
9     findings, based on substantial evidence in the record, that the action  
10    is consistent with the ~~resource~~ *resources* management plan, the  
11    approved portions of local government general plans that  
12    implement the ~~resource~~ *resources* management plan, and this  
13    division.

14    SEC. 41. Section 29773 is added to the Public Resources Code,  
15    to read:

16    29773. (a) The commission may review and provide comments  
17    and recommendations to the Delta Stewardship Council on any  
18    significant project or proposed project within the scope of the Delta  
19    Plan, including, but not limited to, actions by state and federal  
20    agencies, that may affect the unique cultural, recreational, and  
21    agricultural values within the primary and secondary zones. Review  
22    and comment authority granted to the commission shall include,  
23    but is not limited to, all of the following:

24    (1) Identification of impacts to the cultural, recreational, and  
25    agricultural values of the Delta.

26    (2) Recommendations for actions that may avoid, reduce, or  
27    mitigate impacts to the cultural, recreational, and agricultural values  
28    of the Delta.

29    (3) Review of consistency of the project or proposed project  
30    with the resources management plan and the Delta Plan.

31    (4) Identification and recommendation of methods to address  
32    Delta community concerns regarding large-scale habitat plan  
33    development and implementation.

34    (b) The council shall consider the recommendations of the  
35    commission during a public hearing and shall make findings  
36    regarding whether the recommendations will be incorporated into  
37    the project and whether the recommendations are consistent with  
38    the Delta Plan.

39    SEC. 42. Section 29773.5 is added to the Public Resources  
40    Code, to read:

1 29773.5. On or before January 1, 2012, the commission shall  
2 prepare and submit to the Legislature recommendations regarding  
3 the potential expansion of or change to the primary zone. The  
4 commission shall consider recommendations on the status of all  
5 of the following areas:

- 6 (a) Rio Vista.
- 7 (b) Isleton.
- 8 (c) Bethel Island.
- 9 (d) Brannan-Andrus Island.
- 10 (e) Cosumnes/Mokelumne floodway.
- 11 (f) The San Joaquin/South Delta lowlands.

12 SEC. 43. Section 29778.5 is added to the Public Resources  
13 Code, to read:

14 29778.5. The Delta Investment Fund is hereby created in the  
15 State Treasury. Any funds within the Delta Investment Fund shall  
16 be available, upon appropriation by the Legislature, to the  
17 commission for the implementation of the regional economic  
18 development plan, developed pursuant to Section 29759, for the  
19 purposes of enhancing Delta communities. The Delta Investment  
20 Fund may receive funds from federal, state, local, and private  
21 sources.

22 SEC. 44. Section 29780 of the Public Resources Code is  
23 amended to read:

24 29780. On January 1 of each year, the commission shall submit  
25 to the Governor and the Legislature a report describing the progress  
26 that has been made in achieving the objectives of this division.  
27 The report shall include, but *need* not be limited to, ~~all both~~ of the  
28 following information:

29 ~~(a) An evaluation of the effectiveness of the resource~~  
30 ~~management plan in preserving agricultural lands, restoring delta~~  
31 ~~habitat, improving levee protection and water quality, providing~~  
32 ~~increased public access and recreational opportunities, and in~~  
33 ~~undertaking other functions prescribed in this division.~~

34 *(a) An evaluation of the effectiveness of the commission in*  
35 *undertaking its functions prescribed in this division, including,*  
36 *but not limited to, its mandates as follows:*

37 *(1) Determining the consistency of local general plans with the*  
38 *Delta Plan.*

39 *(2) Outcomes of appealed local land use decisions pursuant to*  
40 *Sections 29770 and 29771.*

1 (3) *Outcomes of reviews initiated by the commission.*

2 (4) *Facilitating regional economic development.*

3 (5) *Supporting other regional activities for the enhancement of*  
4 *Delta communities.*

5 (b) An update of the ~~resource~~ resources management plan, using  
6 baseline conditions set forth in the original resource management  
7 plan.

8 SEC. 45. Division 22.3 (commencing with Section 32300) is  
9 added to the Public Resources Code, to read:

10  
11 DIVISION 22.3. SACRAMENTO-SAN JOAQUIN DELTA  
12 CONSERVANCY

13  
14 CHAPTER 1. GENERAL PROVISIONS

15  
16 32300. This division shall be known, and may be cited, as the  
17 Sacramento-San Joaquin Delta Conservancy Act.

18 32301. The Legislature finds and declares all of the following:

19 (a) The Sacramento-San Joaquin Delta is a unique natural  
20 resource of local, state, and national significance.

21 (b) At 1,300 square miles, the Delta is the largest estuary on the  
22 west coast of North and South America.

23 (c) Its rivers and labyrinths of sloughs and channels are home  
24 to 750 species of plants and wildlife as well as 55 species of fish,  
25 provide habitat for 700 native plant and animal species, and are  
26 part of the Pacific Flyway.

27 (d) The Delta contains more than 500,000 acres of agricultural  
28 land, with unique soils, and farmers who are creative and utilize  
29 innovative agriculture, such as carbon sequestration crops,  
30 subsidence reversal crops, wildlife-friendly crops, and crops direct  
31 for marketing to the large urban populations nearby.

32 (e) The Delta and Suisun Marsh provide numerous opportunities  
33 for recreation, such as boating, kayaking, fishing, hiking, birding,  
34 and hunting. Navigable waterways in the Delta are available for  
35 public access and currently make up the majority of recreational  
36 opportunities. There is a need for land-based recreational access  
37 points including parks, picnic areas, and campgrounds.

38 (f) The Delta's history is rich with a distinct natural, agricultural,  
39 and cultural heritage. It is home to the community of Locke, the  
40 only town in the United States built primarily by early Chinese

1 immigrants. Other legacy communities include Bethel Island,  
2 Clarksburg, Courtland, Freeport, Hood, Isleton, Knightsen, Rio  
3 Vista, Ryde, and Walnut Grove.

4 (g) The Delta is home to more than 500,000 people and 200,000  
5 jobs, and contributes over thirty-five billion dollars  
6 (\$35,000,000,000) to the state's economy.

7 (h) In addition, the Delta provides water to more than 25 million  
8 Californians and three million acres of agricultural land. It supports  
9 a four hundred billion dollar (\$400,000,000,000) economy and is  
10 traversed by energy, communications, and transportation facilities  
11 vital to the economic health of California.

12 (i) A Sacramento-San Joaquin Delta Conservancy can support  
13 efforts that advance both environmental protection and the  
14 economic well-being of Delta residents in a complementary  
15 manner, including all of the following:

16 (1) Protect and enhance habitat and habitat restoration.

17 (2) Protect and preserve Delta agriculture and working  
18 landscapes.

19 (3) Undertake efforts to enhance public use and enjoyment of  
20 lands owned by the public, including linkages to areas outside the  
21 Delta.

22 (4) Provide increased opportunities for tourism and recreation.

23 (5) Promote Delta legacy communities and economic vitality  
24 in the Delta in coordination with the Delta Protection Commission.

25 (6) Increase the resilience of the Delta to the effects of natural  
26 disasters such as floods and earthquakes, in coordination with the  
27 Delta Protection Commission.

28 (7) Protect and improve water quality.

29 (8) Assist the Delta regional economy through the operation of  
30 the conservancy's program.

31 (9) Identify priority projects and initiatives for which funding  
32 is needed.

33 (10) Protect, conserve, and restore the region's physical,  
34 agricultural, cultural, historical, and living resources.

35 (11) Assist local entities in the implementation of their habitat  
36 conservation plans (HCPs) and natural community conservation  
37 plans (NCCPs).

38 (12) Facilitate take protection and safe harbor agreements under  
39 the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531  
40 et seq.) and the California Endangered Species Act (Chapter 1.5

(commencing with Section 2050) of Division 3 of the Fish and Game Code) for adjacent landowners and local public agencies.

(13) Promote environmental education.

(j) The voluntary acquisition of wildlife and agricultural conservation easements in the Delta promotes and enhances the traditional Delta values associated with agriculture, habitat, and recreation.

## CHAPTER 2. DEFINITIONS

32310. For the purposes of this division, the following terms have the following meanings:

(a) “Board” means the governing board of the Sacramento-San Joaquin Delta Conservancy.

(b) “Conservancy” means the Sacramento-San Joaquin Delta Conservancy.

(c) “Delta” means the Sacramento-San Joaquin Delta as defined in Section 12220 of the Water Code.

(d) “Fund” means the Sacramento-San Joaquin Delta Conservancy Fund created pursuant to Section 32360.

(e) “Local public agency” means a city, county, special district, or joint powers authority.

(f) “Nonprofit organization” means a private, nonprofit organization that qualifies for exempt status under Section 501(c)(3) of Title 26 of the United States Code and that has among its principal charitable purposes preservation of land for scientific, recreational, scenic, or open-space opportunities, protection of the natural environment, preservation or enhancement of wildlife, preservation of cultural and historical resources, or efforts to provide for the enjoyment of public lands.

(g) “Suisun Marsh” means the area defined in Section 29101 and protected by Division 19 (commencing with Section 29000).

(h) “Tribal organization” means an Indian tribe, band, nation, or other organized group or community, or a tribal agency authorized by a tribe, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and is identified on pages 52829 to 52835, inclusive, of Number 250 of Volume 53 (December 29, 1988) of the Federal Register, as that list may be updated or amended from time to time.

1 CHAPTER 3. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY

2  
3 32320. There is in the Natural Resources Agency the  
4 Sacramento-San Joaquin Delta Conservancy, which is created as  
5 a state agency to work in collaboration and cooperation with local  
6 governments and interested parties.

7 32322. (a) The conservancy shall support efforts that advance  
8 both environmental protection and the economic well-being of  
9 Delta residents in a complementary manner, including all of the  
10 following:

- 11 (1) Protect and enhance habitat and habitat restoration.
- 12 (2) Protect and preserve Delta agriculture and working  
13 landscapes.
- 14 (3) Provide increased opportunities for tourism and recreation  
15 in the Delta.
- 16 (4) Promote Delta legacy communities and economic vitality  
17 in the Delta, in coordination with the Delta Protection Commission.
- 18 (5) Increase the resilience of the Delta to the effects of natural  
19 disasters such as floods and earthquakes, in coordination with the  
20 Delta Protection Commission.
- 21 (6) Protect and improve water quality.
- 22 (7) Assist the Delta regional economy through the operation of  
23 the conservancy's program.
- 24 (8) Identify priority projects and initiatives for which funding  
25 is needed.
- 26 (9) Protect, conserve, and restore the region's physical,  
27 agricultural, cultural, historical, and living resources.
- 28 (10) Assist local entities in the implementation of their habitat  
29 conservation plans (HCPs) and natural community conservation  
30 plans (NCCPs).
- 31 (11) Facilitate take protection and safe harbor agreements under  
32 the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531  
33 et seq.) and the California Endangered Species Act (Chapter 1.5  
34 (commencing with Section 2050) of Division 3 of the Fish and  
35 Game Code) for adjacent landowners and local public agencies.
- 36 (12) Promote environmental education through grant funding.
- 37 (b) When implementing subdivision (a), the conservancy shall  
38 undertake efforts to enhance public use and enjoyment of lands  
39 owned by the public.

## CHAPTER 4. GOVERNING BOARD

32330. The board shall consist of 11 voting members and five nonvoting members, appointed or designated as follows:

(a) The 11 voting members of the board shall consist of all of the following:

(1) The Secretary of the Natural Resources Agency, or his or her designee.

(2) The Director of Finance, or his or her designee.

(3) One member of the board or a designee who is appointed by the Contra Costa County Board of Supervisors, who is a resident of that county.

(4) One member of the board or a designee who is appointed by the Sacramento County Board of Supervisors, who is a resident of that county.

(5) One member of the board or a designee who is appointed by the San Joaquin County Board of Supervisors, who is a resident of that county.

(6) One member of the board or a designee who is appointed by the Solano County Board of Supervisors, who is a resident of that county.

(7) One member of the board or a designee who is appointed by the Yolo County Board of Supervisors, who is a resident of that county.

(8) Two public members appointed by the Governor.

(9) One public member appointed by the Senate Committee on Rules.

(10) One public member appointed by the Speaker of the Assembly.

(b) The five nonvoting members shall consist of all of the following:

(1) A designee of the San Francisco Bay Conservation and Development Commission for coordination purposes.

(2) A designee of the State Coastal Conservancy for coordination purposes.

(3) A designee of the Suisun Resource Conservation District for coordination purposes.

(4) A Member of the Senate, appointed by the Senate Committee on Rules, and a Member of the Assembly, appointed by the Speaker of the Assembly, shall meet with the conservancy and participate



1 in its activities to the extent that this participation is not  
2 incompatible with their positions as Members of the Legislature.  
3 The appointed members shall represent a district that encompasses  
4 a portion of the Delta.

5 (c) Four nonvoting liaison advisers who shall serve in an  
6 advisory, nonvoting capacity shall consist of all of the following:

7 (1) One representative of the United States Fish and Wildlife  
8 Service, designated by the United States Secretary of the Interior.

9 (2) One representative of the United States National Marine  
10 Fisheries Service, designated by the United States Secretary of the  
11 Interior.

12 (3) One representative of the United States Bureau of  
13 Reclamation, designated by the United States Secretary of the  
14 Interior.

15 (4) One representative of the United States Army Corps of  
16 Engineers, designated by the Commanding Officer, United States  
17 Army Corps of Engineers, South Pacific Division.

18 (d) The public member appointed by the Governor shall serve  
19 at his or her pleasure.

20 (e) The locally appointed members and alternates shall serve at  
21 the pleasure of the appointing board of supervisors.

22 (f) The public members appointed by the Senate Committee on  
23 Rules and the Speaker of the Assembly shall serve for a term of  
24 four years, with a two-term limit.

25 (g) The Members of the Senate and Assembly shall serve for a  
26 term of four years, with a two-term limit.

27 (h) Alternates may be appointed by the county boards of  
28 supervisors.

29 32332. Annually, the voting members of the board shall elect  
30 from among the voting members a chairperson and vice  
31 chairperson, and other officers as necessary. If the office of the  
32 chairperson or vice chairperson becomes vacant, a new chairperson  
33 or vice chairperson shall be elected by the voting members of the  
34 board to serve for the remainder of the term. The chairperson shall  
35 be selected from among the members specified in paragraphs (3)  
36 to (7), inclusive, of subdivision (a) of Section 32330.

37 32334. A majority of the voting members shall constitute a  
38 quorum for the transaction of the business of the conservancy. The  
39 board shall not transact the business of the conservancy if a quorum  
40 is not present at the time a vote is taken. A decision of the board

1 requires an affirmative vote of six of the voting members, and the  
2 vote is binding with respect to all matters acted on by the  
3 conservancy.

4 32336. The board shall adopt rules and procedures for the  
5 conduct of business by the conservancy.

6 32338. The board may establish advisory boards or committees,  
7 hold community meetings, and engage in public outreach.

8 32340. The board shall establish and maintain a headquarters  
9 office within the Delta. The conservancy may rent or own real and  
10 personal property and equipment pursuant to applicable statutes  
11 and regulations.

12 32342. The board shall determine the qualifications of, and  
13 shall appoint, an executive officer of the conservancy, who shall  
14 be exempt from civil service. The board shall employ other staff  
15 as necessary to execute the powers and functions provided for in  
16 this division.

17 32344. The board may enter into contracts with private entities  
18 and public agencies to procure consulting and other services  
19 necessary to achieve the purposes of this division.

20 32346. The conservancy's expenses for support and  
21 administration may be paid from the conservancy's operating  
22 budget and any other funding sources available to the conservancy.

23 32348. The board shall conduct business in accordance with  
24 the Bagley-Keene Open Meeting Act (Article 9 (commencing with  
25 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of  
26 the Government Code).

27 32350. The board shall hold its regular meetings within the  
28 Delta or the City of Rio Vista.

29  
30 CHAPTER 5. POWERS, DUTIES, AND LIMITATIONS  
31

32 32360. (a) Except as specified in Section 32360.5, the  
33 jurisdiction and activities of the conservancy are limited to the  
34 Delta and Suisun Marsh.

35 (b) The Sacramento-San Joaquin Delta Conservancy Fund is  
36 hereby created in the State Treasury. Moneys in the fund shall be  
37 available, upon appropriation by the Legislature, only for the  
38 purposes of this division.

1 (1) Funds provided for ecosystem restoration and enhancement  
2 shall be available for projects consistent with the conservancy's  
3 strategic plan adopted pursuant to Section 32376.

4 (2) Funds provided for regional sustainability shall be available  
5 for projects consistent with the Delta Protection Commission's  
6 Regional Sustainability and Land Use Plan.

7 32360.5. In furtherance of the conservancy's role in  
8 implementing the Delta Plan, the conservancy may take or fund  
9 an action outside the Delta and Suisun Marsh if the board makes  
10 all of the following findings:

11 (a) The project implements the ecosystem goals of the Delta  
12 Plan.

13 (b) The project is consistent with the requirements of any  
14 applicable state and federal permits.

15 (c) The conservancy has given notice to and receives and  
16 reviews any comments from affected local jurisdictions and the  
17 Delta Protection Commission.

18 (d) The conservancy has given notice to and reviewed any  
19 comments received from any state conservancy where the project  
20 is located.

21 (e) The project will provide significant benefits to the Delta.

22 32362. The conservancy may engage in partnerships with  
23 nonprofit organizations, local public agencies, and landowners.

24 32363. In carrying out this division, the conservancy shall  
25 cooperate and consult with the city or county in which a grant is  
26 proposed to be expended or an interest in real property is proposed  
27 to be acquired, and shall, as necessary or appropriate, coordinate  
28 its efforts with other state agencies, in cooperation with the  
29 Secretary of the Natural Resources Agency. The conservancy shall,  
30 as necessary or appropriate, cooperate and consult with a public  
31 water system, levee, flood control, or drainage agency that owns  
32 or operates facilities, including lands appurtenant thereto, where  
33 a grant is proposed to be expended or an interest in land is proposed  
34 to be acquired.

35 32364. (a) The conservancy may provide grants and loans to  
36 state agencies, local public agencies, nonprofit organizations, and  
37 tribal organizations to further the goals of the conservancy.

38 (b) An entity applying for a grant from the conservancy to  
39 acquire an interest in real property shall specify all of the following  
40 in the grant application:

1 (1) The intended use of the property.

2 (2) The manner in which the land will be managed.

3 (3) How the cost of ongoing operations, maintenance, and  
4 management will be provided, including an analysis of the  
5 maintaining entity's financial capacity to support those ongoing  
6 costs.

7 (4) Grantees shall demonstrate, where applicable, how they will  
8 provide payments in lieu of taxes, assessments, or charges  
9 otherwise due to elements of local government.

10 32366. The conservancy may acquire from willing sellers or  
11 transferors interests in real property and improve, lease, or transfer  
12 interests in real property, in order to carry out the purposes of this  
13 division. However, the conservancy shall not acquire a fee interest  
14 in real property.

15 32368. The conservancy may enter into an agreement with a  
16 public agency, nonprofit organization, or private entity for the  
17 construction, management, or maintenance of facilities authorized  
18 by the conservancy.

19 32370. The conservancy shall not exercise the power of eminent  
20 domain.

21 32372. (a) The conservancy may pursue and accept funds from  
22 various sources, including, but not limited to, federal, state, and  
23 local funds or grants, private philanthropy, gifts, donations,  
24 bequests, devises, subventions, grants, rents, royalties, or other  
25 assistance and funds from public and private sources.

26 (b) The conservancy may accept fees levied by others.

27 (c) The conservancy may create and manage endowments.

28 (d) All funds received by the conservancy shall be deposited in  
29 the fund for expenditure for the purposes of this division.

30 32376. Within two years of hiring an executive officer, the  
31 board shall prepare and adopt a strategic plan to achieve the goals  
32 of the conservancy. The plan shall describe its interaction with  
33 local, regional, state, and federal land use, recreation, water and  
34 flood management, and habitat conservation and protection efforts  
35 within and adjacent to the Delta. The strategic plan shall establish  
36 priorities and criteria for projects and programs, based upon an  
37 assessment of program requirements, institutional capabilities, and  
38 funding needs throughout the Delta. The strategic plan shall be  
39 consistent with the Delta Plan, the Delta Protection Commission's  
40 Regional Sustainability and Land Use Plan, the Central Valley

1 Flood Protection Plan, the Suisun Marsh Preservation Act, and the  
2 Habitat Management, Preservation and Restoration Plan for the  
3 Suisun Marsh.

4 32378. (a) The conservancy may expend funds and award  
5 grants and loans to facilitate collaborative planning efforts and to  
6 develop projects and programs that are designed to further the  
7 purposes of this division.

8 (b) The conservancy may provide and make available technical  
9 information, expertise, and other nonfinancial assistance to public  
10 agencies, nonprofit organizations, and tribal organizations, to  
11 support program and project development and implementation.

12 32380. The conservancy may acquire water or water rights to  
13 support the goals of the conservancy.

14 32381. This division does not grant to the conservancy any of  
15 the following:

16 (a) The power of a city or county to regulate land use.

17 (b) The power to regulate any activities on land, except as the  
18 owner of an interest in the land, or pursuant to an agreement with,  
19 or a license or grant of management authority from, the owner of  
20 an interest in the land.

21 (c) The power over water rights held by others.

22 SEC. 46. If the Commission on State Mandates determines  
23 that this act contains costs mandated by the state, reimbursement  
24 to local agencies and school districts for those costs shall be made  
25 pursuant to Part 7 (commencing with Section 17500) of Division  
26 4 of Title 2 of the Government Code.

27 SEC. 47. This bill shall only become operative if \_\_\_\_ of the  
28 2009–10 Regular Session of the Legislature are each enacted and  
29 become effective on or before January 1, 2010.

## **2009 Delta & Water Reform Legislation – October 12 California Delta Governance & Planning**

**SUMMARY:** Reforms policy and governance for the Sacramento-San Joaquin Delta (Delta). Specifically, the proposed agreement for Delta governance:

- 1) 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.
  - a) Requires DPC to create a regional economic sustainability plan, including creation of a Delta Investment Fund in the State Treasury.
  - b) Requires DPC to submit recommendations regarding potential expansion of or change to the Delta's primary zone to the Legislature.
- 2) Creates a new Sacramento-San Joaquin Delta Conservancy (Conservancy), to support efforts that advance environmental protection and the economic well-being of Delta residents.
  - a) Establishes and limits the Conservancy's powers and duties, to focus its efforts on collaborative projects in the Delta and Suisun Marsh.
  - b) Requires the Conservancy to develop a strategic plan consistent with the Delta Plan and other applicable regional plans affecting the Delta or Suisun Marsh
  - c) Establishes the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury.
- 3) Repeals the California Bay-Delta Authority Act.
- 4) Establishes 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.
- 5) Requires the Delta Stewardship Council, Department of Water Resources (DWR) or Department of Fish & Game (DFG) to take certain "early actions," including certain Delta ecosystem restoration projects such as "Two-Gates Fish Protection Demonstration Project."
- 6) Requires State Water Resources Control Board (SWRCB) to develop new flow criteria for the Delta ecosystem necessary to protect public trust resources.
- 7) Creates Delta Stewardship Council (Council) as an independent state agency.
  - a) 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.
  - b) Specifies authority of Council, including appeals of state/local agency determinations of consistency with Delta Plan.

- 8) Creates Delta Watermaster as enforcement officer for SWRCB in the Delta.
- 9) Creates Delta Independent Science Board (Science Board) and Delta Science Program.
- 10) Requires 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.
  - a) Requires Delta Protection Commission (DPC) to develop proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place.
  - b) Requires Delta Plan to further the coequal goals of Delta ecosystem restoration and a reliable water supply.
- 11) Requires 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.
- 12) Requires 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.
- 13) Requires Council to consider including the Bay Delta Conservation Plan (BDCP) under certain circumstances, including:
  - a) Conditions BDCP incorporation into Delta Plan and state funding for BDCP public benefits on compliance with the Natural Community Conservation Planning (NCCP) Act and California Environmental Quality Act (CEQA).
  - b) Requires certain analyses as part of CEQA compliance for BDCP:
  - c) Requires DWR to consult with Council and Science Board during development of BDCP.
  - d) Requires BDCP to include transparent, real-time operational decisionmaking process in which fishery agencies ensure applicable biological performance measures are achieved in a timely manner.

EXISTING LAW establishes more than 200 state and local agencies with responsibilities and authority in the Delta, including DPC, DWR, DFG, and the California Bay-Delta Authority

COMMENTS: Since the Assembly Water, Parks and Wildlife (WP&W) Committee considered the Delta governance and planning provisions, as part of SB 68, on September 11, this portion of the 2009 Delta/Water legislative package has changed very little. The only change is the staggering of the governor's appointments to the Delta Stewardship Council. Instead of staggering the Governor's first appointments by 1-4 years, the Governor's initial appointees will have either four-year or six-year terms. For more information on the Delta governance/planning segment, please see the bill analysis for SB 68, on the WP&W webpage.



**SB X7 1 (Steinberg) – October 23, 2009**  
**Delta & Water Reform Legislation**  
**SUMMARY: California Delta Governance & Planning**

SUMMARY: Reforms policy and governance for the Sacramento-San Joaquin Delta (Delta). [Sections 3-39, 72, 73] Specifically, the proposed agreement for Delta governance:

- 1) 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 and advising the Delta Council.
  - a) Requires DPC to create a regional economic sustainability plan, including creation of a Delta Investment Fund in the State Treasury.
  - b) Requires DPC to submit recommendations regarding potential expansion of or change to the Delta's primary zone to the Legislature.
  - c) Requires the Delta Council to consider DPC recommendations and adopt such recommendations, if in the Council's discretion they are feasible and consistent with the Delta Plan objectives.
- 2) Creates a new Sacramento-San Joaquin Delta Conservancy (Conservancy), to support efforts that advance environmental protection and the economic well-being of Delta residents.
  - a) Establishes and limits the Conservancy's powers and duties, to focus its efforts on collaborative projects in the Delta and Suisun Marsh.
  - b) Requires the Conservancy to develop a strategic plan consistent with the Delta Plan and other applicable regional plans affecting the Delta or Suisun Marsh
  - c) Establishes the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury.
- 3) Repeals the California Bay-Delta Authority Act.
- 4) Establishes 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.
  - a) Sets state policy and objectives for management of the Delta.
  - b) Defines several important new legal terms related to managing the Delta, including "co-equal goals," adaptive management, ecosystem restoration, new Delta governance entities, and "covered actions" that are subject to appeal to the Delta Council for a determination of consistency with the Delta Plan.

- c) Preserves existing law – explicitly – relating to several legal issues, including:
  - i) statutory protection for area-of-origin
  - ii) specified statutes establishing environmental protection regulatory processes
  - iii) water rights, including procedural and substantive protections for water right holders, such as the domestic use preference
  - iv) scope of SWRCB authority and judicial jurisdiction to regulate water rights
  - v) state liability for flood protection in the Delta or its watershed
- 5) Requires the Delta Stewardship Council, Department of Water Resources (DWR) or Department of Fish & Game (DFG) to take certain "early actions," including certain Delta ecosystem restoration projects such as "Two-Gates Fish Protection Demonstration Project."
- 6) Requires State Water Resources Control Board (SWRCB) to develop new flow criteria for the Delta ecosystem necessary to protect public trust resources, to inform planning decisions in the Delta Plan and the Bay Delta Conservation Plan.
  - a) Specifies informational process for developing new flow criteria, pursuant to SWRCB regulations, that includes opportunity for all interested persons to participate.
  - b) Requires order approving moving the point of diversion for the State Water Project (SWP) and the federal Central Valley Project (CVP) to the Sacramento River to include "appropriate" Delta flow criteria.
  - c) Requires SWP/CVP water contractors to pay costs of flow criteria analysis.
- 7) Creates Delta Stewardship Council (Council) as an independent state agency.
  - a) 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.
  - b) Specifies authority of Council, including appeals of state/local agency determinations of consistency with Delta Plan, with specified exemptions.
- 8) Creates Delta Watermaster as enforcement officer for SWRCB in the Delta.
- 9) Creates Delta Independent Science Board (Science Board) and Delta Science Program.
- 10) Requires 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.
  - a) Requires Delta Protection Commission (DPC) to develop proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place.
  - b) Requires Delta Plan to further the coequal goals of Delta ecosystem restoration and a reliable water supply.

- 11) Requires 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.
- 12) Requires 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.
- 13) Requires Council to consider including the Bay Delta Conservation Plan (BDCP) under certain circumstances, including:
  - a) Conditions BDCP incorporation into Delta Plan and state funding for BDCP public benefits on compliance with the Natural Community Conservation Planning (NCCP) Act and California Environmental Quality Act (CEQA).
  - b) Requires certain analyses as part of CEQA compliance for BDCP:
  - c) Requires DWR to consult with Council and Science Board during development of BDCP.
  - d) Requires BDCP to include transparent, real-time operational decisionmaking process in which fishery agencies ensure applicable biological performance measures are achieved in a timely manner.
- 14) Appropriates \$28 million for the "Two-Gates Fish Protection Demonstration Program."

EXISTING LAW establishes more than 200 state and local agencies with responsibilities and authority in the Delta, including SWRCB, DPC, DWR, DFG, and the California Bay-Delta Authority.

COMMENTS: Since the Assembly Water, Parks and Wildlife (WP&W) Committee considered the Delta governance and planning provisions, as part of SB 68 (the regular session version of this bill), on September 11, this portion of the 2009 Delta/Water legislative package has changed in limited ways, to address certain concerns.

- **Governor's Council Appointments:** SB X7 1 removes the staggering of the Governor's initial appointments to the Delta Stewardship Council. Instead of staggering the Governor's first appointments by 1-4 years, two initial gubernatorial appointees will have 4-year terms and two will have 6-year terms. After those initial appointments both gubernatorial and legislative appointees to the Council will have 4-year terms.
- **Delta Water Quality:** SB X7 1 amended SB 68's original findings and state policies to incorporate water quality concerns for human health and the environment.
- **Savings Clauses:** SB X7 1 expanded the provisions that preserve legal protections in existing law, to assure that water rights are respected and water right holders receive the procedural and substantive protections of existing law.
- **"Covered Actions" Exemptions/Grandfather Clause:** The definition of "covered actions" sets the scope of what agency actions may be appealed to the Council as inconsistent with the Delta Plan. SB X7 1 adds exemptions to the definition to exclude: 1) regional transportation plans; 2) local plans or projects that comply with Government Code provisions for sustainable communities; 3) routine maintenance and operation of local government facilities in the Delta; 4) local agency projects that are either "fully permitted" or have completed the CEQA process by September 30, 2009.

- **Flow Criteria:** SB X7 1 – like SB 68 – requires SWRCB to exercise its public trust authority to develop new "flow criteria" to inform planning decisions for the Delta Plan. These "flow criteria" are an important new creation of this bill, *not* based on existing state or federal law. (State law requires "objectives," while federal law requires "criteria" but not related to flow.) In essence, development of these flow criteria will ask – at the front end of Delta planning and not at the back end of SWRCB permit decisions – what water the Delta needs. SB X7 1 amendments accomplished two things: 1) Focused this effort on informing planning decisions for the Delta Plan and the Bay Delta Conservation Plan; and 2) specified the procedure for SWRCB to develop the flow criteria, relying on an "informational proceeding," not a regulatory proceeding.
- **Watermaster Authority:** SB X7 1 specifies the scope of the Delta Watermaster's authority as applying to diversions in the Delta and board requirements that apply to conditions in the Delta. This further specification is consistent with the original definition of the "Delta Watermaster." It ensures that the Watermaster has authority over both in-Delta water diversions and water project operations outside the Delta where SWRCB has conditioned the water right permits based on conditions in the Delta. The CVP permits for New Melones Reservoir, for example, are conditioned on compliance with certain Delta water quality requirements, leading to reservoir releases to dilute salinity coming downstream on the San Joaquin River.

Summary Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096



## California State Legislature

# THE 2009 DELTA & WATER LEGISLATION Legislative History

### III. Water Conservation

- A. AB 49 (Feuer)
- B. SB 261 (Dutton)
- C. Development of Water Conservation Legislation
- D. Final Outcome – SB 7 (Steinberg)

Date of Hearing: April 14, 2009

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE  
Jared William Huffman, Chair  
AB 49 (Feuer and Huffman) – As Amended: April 13, 2009

SUBJECT: Water conservation

SUMMARY: Requires achievement of a 20% reduction in urban per capita water use in California by 2020. Specifically, this bill:

- 1) Requires the state to achieve a 20% reduction in urban per capita water use in California on or before December 31, 2020, with incremental progress of at least 10% by 2015.
- 2) Requires the Department of Water Resources (DWR) to develop regional urban water use targets (both interim and long-term), through a public process, by December 31, 2010.
- 3) Requires each urban retail water supplier to meet its urban water use target by 2020, and interim target by 2015.
- 4) Allows flexibility for urban retail water suppliers to meet urban water use targets, relying on regional cooperation/planning and water use efficiency gains in any or all water use sectors – residential, commercial, institutional and industrial.
- 5) Allows public utilities to recover the costs of water conservation from ratepayers.
- 6) Requires urban wholesale water suppliers to assess present and proposed conservation measures, programs and policies required by this bill.
- 7) Requires urban water suppliers to report progress on meeting water conservation targets in urban water management plans.
- 8) Requires state agencies to reduce water use on their facilities in support of urban retail water suppliers meeting their targets.
- 9) Requires agricultural water suppliers to implement, by July 31, 2012, certain best management practices for water use efficiency.
  - a) Requires agricultural water suppliers to implement certain “critical” best management practices:
    - i) Measure volume of water delivered to customers to implement volumetric pricing.
    - ii) Designate a water conservation coordinator.
    - iii) Make certain water management services to water users.
    - iv) Adopt a pricing structure for water customers based at least in part on quantity.
    - v) Evaluate policies of agencies providing water to agricultural water supplier for more flexible water deliveries and storage.
    - vi) Evaluate and improve pump efficiencies.

- b) Requires agricultural water suppliers to implement additional best management practices if locally cost effective and technically feasible:
    - i) Facilitate alternative land use for lands with exceptionally high water use.
    - ii) Facilitate use of recycled water under certain conditions.
    - iii) Facilitate financing of capital improvements for on-farm irrigation systems.
    - iv) Implement incentive pricing structure promoting certain water use efficiency goals.
    - v) Line or pipe water distribution systems and construct regulatory reservoirs.
    - vi) Increase flexibility in water ordering by water customers within operational limits.
    - vii) Construct and operate spill and tailwater recovery systems.
    - viii) Increased planned conjunctive use of surface and groundwater storage.
  - c) Requires agricultural water suppliers to report to DWR on best management practices, allowing compliance through submission of agricultural water management plan or submission to federal Bureau of Reclamation.
  - d) Allows DWR to update best management practices after technical and public input and consultation with certain organizations.
- 10) Requires DWR to develop a standardized water use reporting form, specifying certain information as to compliance with conservation targets and best management practices.
- 11) Conditions water management grants/loans for urban or agricultural water suppliers on compliance with water conservation requirements, after an unspecified date, except that such suppliers may obtain funding to support water conservation, under certain conditions, or the supplier's entire service area qualifies as a disadvantaged community.
- 12) States legislative intent to use Proposition 84 funding for water conservation.
- 13) Requires DWR to develop a methodology for quantifying agricultural water use efficiency.
- 14) Reauthorizes provisions requiring agricultural water management plans, allowing for compliance through water conservation plans submitted to the Bureau of Reclamation or the Agricultural Water Management Council or through urban water management plans or regional water plans meeting the requirements of this part:
- a) Requires agricultural water suppliers to adopt agricultural water plans by December 31, 2011 and 2015 and every five years thereafter.
  - b) Requires agricultural water suppliers to notify cities and counties of preparation of an agricultural water management plan and allows for consultation with cities/counties.
  - c) Specifies content of agricultural water management plans, with some similarity to existing requirements for urban water management plans.
  - d) Requires certain public process for development, adoption and amendment of agricultural water management plans.



- e) Requires DWR to prepare and submit a report summarizing and evaluating status of agricultural water management plans, including recommendations for improvements, but specifically barring DWR from critiquing individual plans.
- f) Narrows grounds and statute of limitations for litigation challenging agricultural water management plans to examining compliance with this part.
- g) Exempts agricultural water management plans from compliance with the California Environmental Quality Act.
- h) Conditions state water management grants/loans to agricultural water suppliers on compliance with this part.
- i) Makes legislative findings and defines certain terms related to agricultural water management planning

15) Makes legislative findings and defines certain terms regarding water conservation.

EXISTING LAW requires "urban water suppliers" to prepare urban water management plans that consider water conservation, and conditions state funding on certain urban water conservation measures. Also, obsolete statute formerly required agricultural water suppliers to prepare agricultural water management plans by 1992. Federal law requires contractors of the federal Central Valley Project to prepare water conservation plans.

FISCAL EFFECT: Unknown

COMMENTS: This bill responds to Governor Schwarzenegger's February 2008 call for Californians to reduce per capita water use by 20% by 2020. This bill follows an earlier effort to implement the Governor's call, AB 2175 (Laird/Feuer), which died in the Senate last year. In the meantime, a statewide drought has worsened and consensus support for greater water conservation has emerged, with environmentalists and water agencies advocating achievement of the Governor's call. The Association of California Water Agencies (ACWA) adopted principles for increasing water conservation earlier this year. Differences, however, as to how to achieve such increased conservation remain.

**Urban Water Conservation.** Over the last several years, the Legislature has continued to promote greater water conservation, through conditioning state funding on agency progress on conservation and other measures. Water agencies began making serious effort at conservation during the last major drought in the early 1990's. At that point, urban water agencies created the California Urban Water Conservation Council and identified a series of "best management practices" (BMPs) for water agencies to implement, through a voluntary memorandum of understanding (MOU). Conservation achieved great success in Southern California, whose water use now approximates levels of 30 years ago – despite a population increase of approximately 30%.

Such success is not uniform, however, as reported by the California Bay-Delta Authority (CBDA) in 2004. CBDA reported that the number of agencies who signed the Water Conservation MOU had increased to 190, but "rates of compliance with the voluntary BMPs

remain low." Today, the Sacramento region uses approximately twice the water used by Southern Californians on a per capita, per day basis.

**Flexibility in Implementation.** This version of the bill provides greater flexibility in how water agencies can achieve higher levels of water conservation, instead of setting specific water use targets in the bill. It sets the "20 by 2020" target (and the interim 2015 target) for the entire state and then allows water agencies the flexibility to achieve that target, through regional cooperation or selection of water-use sectors. The bill requires the Department of Water Resources (DWR) to develop regional urban water use targets by 2010. In developing those targets through a public process, DWR will be able to account for regional differences in water use and supply, as well as previous success in implementing conservation measures. This change addresses the objection to last year's bill that it tried to make "one size fit all."

**Agricultural Water Conservation.** Agriculture continues to use the lion's share of California's developed water supplies – approximately 80%. (This does not include the water left instream for environmental purposes.) Water conservation efforts vary widely within the agricultural community. Some water users who pay higher prices for water or have less reliable supplies have invested substantially in water conservation. Others, who enjoy better supply reliability and lower costs, have done less. Information on agricultural water use efficiency is less available, because state law does not require comprehensive planning and reporting of agricultural water management/conservation efforts.

Much of last year's bill debate focused on conservation in agriculture. Urban water agencies insisted that agriculture must participate in some kind of conservation effort, and agricultural agencies objected to the different proposals for their participation. Like the urban debate, this debate concentrates on adjusting to differing conditions.

This bill relies on implementation of agricultural BMPs for water use, which have been developed, at least in part, by the Agricultural Water Management Council (AWMC). The bill creates two BMP categories – "critical" BMPs that must agricultural water suppliers must implement by all and "additional" BMPs that must be implemented if the measures are locally cost effective and technically feasible. It also requires reporting on BMP implementation by agricultural water suppliers. This structure allows for water agencies to adjust to the needs of their water users, as the mandatory BMPs promote but do not actually require conservation, such as water management services and pricing structures.

**Agricultural Water Management Plans.** In addition to BMPs, AB 49 reauthorizes outdated Water Code provisions that formerly required agricultural water suppliers to prepare agricultural water management plans. The Committee previously has approved this concept in three bills by former Senator Kuehl (2005-07). The Governor vetoed all three, mostly due to costs of comprehensive reporting/planning requirements in those bills.

This bill defines "agricultural water suppliers" that are required to create a plan and conserve water as those with 2000 acres of irrigated land or 2000 acre-feet of water deliveries. The definition of "urban water supplier" puts the threshold at 3000 connections or 3000 acre-feet of deliveries. Previous bills provided for DWR to determine the appropriate threshold for imposing requirements.

**Opposition's Concerns.** Representatives of the agricultural community (primarily) submitted a coalition letter opposing AB 49 for the following reasons:

- duplicative requirements for agricultural water conservation and water plans
- mandate of BMPs not locally cost efficient not technically feasible
- too low a threshold for agricultural water management plans (i.e. 2000 acre/acre-feet)
- difficulty in estimating net water savings in agriculture, due to re-use
- "neither necessary nor desirable" quantification of agricultural water use efficiency
- "neither necessary nor desirable" DWR reporting on agricultural water management plans
- application to commercial, industrial and institutional water users

In essence, the agricultural advocates object to imposing any costs or requirements for water-use efficiency on agricultural water districts. The letter does not offer any alternatives for how agriculture might achieve additional efficiency or how conservation can contribute to relief from the current drought. Some parts of the agricultural community, including signatories to this letter, have called on the State to spend billions in taxpayer funding for water infrastructure, but have not suggested how agricultural water conservation could contribute to resolving California's water challenges. The letter also does not discuss the San Joaquin Valley's reliance on water from the Sacramento-San Joaquin Delta, which currently suffers from crisis and has not been able to export sufficient water to agriculture, including some of the signers to this letter. The Delta Vision Strategic Plan identified statewide water conservation as a critical goal for improving conditions in the Delta.

#### REGISTERED SUPPORT / OPPOSITION:

##### Support

Natural Resources Defense Council (Sponsor)  
American Federation of State, County and Municipal Employees

##### Opposition

Agricultural Council of CA  
CA Association of Nurseries and Garden  
Centers  
CA Association of Winegrape Growers  
CA Chamber of Commerce  
CA Citrus Mutual  
CA Cotton Growers and Ginners Assoc.  
CA Council for Environmental and  
Economic Balance  
CA Farm Bureau Federation  
Friant Water Authority

Imperial Irrigation District  
Irrigation Association  
Kern County Water Agency  
Modesto Irrigation District  
Nisei Farmers League  
Northern CA Water Association  
Solano County Water Agency  
Valley Ag Water Coalition  
Western Growers  
Wine Institute

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

Date of Hearing: April 29, 2009

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Kevin De Leon, Chair

AB 49 (Feuer) – As Amended: April 13, 2009

Policy Committee: WPW

Vote: 7-4

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY

Requires a 20% reduction in urban per capita water use by the end of 2020 and requires agricultural water suppliers to implement best management practices (BMPs) by July 31, 2012.

FISCAL EFFECT

- 1) Substantial costs, in the millions of dollars from 2009-10 through 2020-21, to the Department of Water Resources (DWR) to establish water reduction and water conservation targets, develop a methodology to quantify the efficiency of agricultural water use, determine urban water use reduction and implementation of agricultural water use BMPs, and develop required forms. (GF or Prop 84 bond proceeds.)
- 2) Substantial costs, in the millions of dollars annually from 2009-10 through 2020-21, to urban water suppliers to comply with per capita water use reduction requirements. These costs are covered by revenue generated from user fees and from grants awarded from the state or federal government.
- 3) Substantial costs, in the millions of dollars from 2010-11 through 2020-21, to agricultural water suppliers to develop and implement BMPs and to prepare and adopt agricultural water management plans.
- 4) Substantial savings, in the millions of dollars annually starting around 2014-15, to urban and agricultural water suppliers if substantially increased water conservation efforts and reduced water use results in significantly lower water supply costs and significantly lower water supply infrastructure expenditures.

SUMMARY (cont.)

Specifically, this bill:

Urban Water Suppliers

- 1) Requires DWR to develop, by December 31, 2010, regional urban water use targets consistent with the goals of reducing urban per capita water use by at least 10% on or before December 31, 2015, and by 20% on or before December 31, 2020, as well as per capita water use calculation procedures.

- 2) Requires each urban water retailer to achieve the 2015 interim urban water use target and the 2020 urban water use target.
- 3) Allows urban retail water suppliers to comply with the targets through flexible mechanisms, such as participation in regional cooperative programs and water use efficiency gains in any water use sectors—residential, commercial, institutional, and industrial.
- 4) States that all costs incurred by a water utility regulated by the Public Utilities Commission (PUC) to comply with these provisions be recoverable through rates, subject to PUC approval.
- 5) Requires urban wholesale water suppliers to report to DWR on their progress towards meeting the water use reduction targets.
- 6) Requires state agencies to reduce water use state facilities in pursuit of these targets.

#### Agricultural Water Suppliers

- 1) Calls on an agricultural water supplier, on or before July 31, 2012, to implement water use efficiency BMPs, as described in the bill and to adopt an agricultural water management plan by December 31, 2011, again by December 31, 2015, and every five years thereafter.
- 2) Requires these suppliers to report to DWR every five years on which BMPs have been implemented and are planned to be implemented and an estimate of water savings.

#### Other Provisions

- 1) Requires DWR, in consultation with other state agencies, to develop a standardized water use reporting form for use by each agency to assess, at a minimum, urban and agricultural water supplier compliance with the bill's targets and requirements.
- 2) States the Legislature's intent to use Proposition 84 bond funds to implement the provisions of this bill.
- 3) Conditions receipt of urban and agricultural water management grants upon progress towards meeting the water use targets described in the bill, as determined by DWR.
- 4) Requires DWR to develop a methodology for quantifying the efficiency of agricultural water use.
- 5) Requires DWR to report to the Legislature, by December 31, 2012, and, generally, every five year thereafter, on the effectiveness of agricultural management plans.
- 6) Exempts agricultural management plans from compliance with the California Environmental Quality Act.

#### COMMENTS

- 1) Rationale. The author believes that water conservation is the most feasible and cost-effective option available to help bring long-term water demand in line with long-term water supply. Statewide use of best water management practices and feasible water conservation measures could reduce total annual water demand by millions of acre feet, reducing or delaying the need to construct and maintain new reservoirs and to import water from other regions of the state. The author believes that Prop 84 bond proceeds earmarked for water supply needs and statewide water supply planning should focus on helping urban and agricultural water suppliers meet long-term water reduction targets and requirements.
- 2) Background. In March of 2008, the governor called on all Californians to conserve water and to reduce their per capita consumption of water by 20% by 2020. This bill reflects the governor's statement, makes it a requirement for urban water suppliers, and requires implementation of BMPs for agricultural water suppliers and adoption of water agricultural water management plans.
- 3) Other Legislation.
  - a) Prop 84, approved by voters at the November 2006 statewide election, authorized the issuance of \$5.388 billion worth of state general obligation bonds to fund various resources-related projects and programs. Prop 84 earmarked \$1 billion in bond proceeds to be provided by DWR as grants to local agencies to meet the long-term water needs of the state, including the delivery of safe drinking water and the protection of water quality and the environment. Eligible projects must implement integrated regional water management plans that address the major water-related objectives and conflicts within the region. Projects must provide multiple benefits, including water supply reliability, water conservation and water use efficiency.
  - b) AB 2175 (Laird, 2008) was similar to this bill, in that it required urban water suppliers to reduce per capita water use in their areas, and established targets for agricultural water conservation. The bill passed this committee 12-5 and passed the Assembly 48-30 but, failed passage in the Senate.

ASSEMBLY THIRD READING  
AB 49 (Feuer and Huffman)  
As Amended June 1, 2009  
Majority vote

WATER, PARKS & WILDLIFE	7-4	APPROPRIATIONS	12-5
Ayes:	Huffman, Blumenfield, Caballero, Krekorian, Bonnie Lowenthal, John A. Perez, Salas	Ayes:	De Leon, Ammiano, Charles Calderon, Davis, Fuentes, Hall, Krekorian, John A. Perez, Price, Skinner, Solorio, Torlakson, Krekorian
Nays:	Fuller, Anderson, Tom Berryhill, Fletcher	Nays:	Nielsen, Duvall, Harkey, Miller, Audra Strickland

SUMMARY: Requires achievement of a 20% reduction in urban per capita water use in California by 2020. Specifically, this bill:

- 1) Requires the state to achieve a 20% reduction in urban per capita water use in California on or before December 31, 2020, with incremental progress of at least 10% by 2015.
- 2) Requires urban retail water suppliers to develop urban water use targets and interim water use targets by December 31, 2010:
  - a) Allows urban retail water suppliers to determine and report progress toward water use targets on an individual or regional basis, and on a fiscal year or calendar year basis;
  - b) States legislative intent for a cumulative 20% reduction, from the baseline, in daily per capita water use by 2020;
  - c) Specifies methods for urban retail water suppliers to determine water use targets:
    - i) 80% of supplier's baseline per capita daily water use;
    - ii) The sum of certain performance standards for certain categories of water use; and,
    - iii) 95% of base per capita water use for suppliers that are pre-1994 members of the California Urban Water Conservation Council (CUWCC) and are at or below the applicable state hydrologic region target set by CUWCC.
  - d) Requires urban retail water suppliers to report certain baseline water use data in 2010;
  - e) Allows urban retail water suppliers to update their 2020 water use target in 2015;
  - f) Requires urban retail water suppliers to meet their own interim water use targets by 2015 and final water use targets by 2020; and,



- g) Defines measure of progress toward water use targets as supplier's compliance daily per capita water use, allowing for adjustments for "weather-normalizing factors."
- 3) Allows flexibility for urban retail water suppliers to meet urban water use targets, relying on regional cooperation/planning and water use efficiency gains in any or all water use sectors – residential, commercial, institutional and industrial.
- 4) Allows public utilities to recover the costs of water conservation from ratepayers.
- 5) Requires urban wholesale water suppliers to assess present and proposed conservation measures, programs and policies required by this bill.
- 6) Requires urban water suppliers to report progress on meeting water conservation targets in urban water management plans.
- 7) Requires the Department of Water Resources (DWR) to convene, by April 1, 2010 and in conjunction with CUWCC, a task force to develop best management practices for the commercial, industrial and institutional water-use sectors.
- 8) Requires DWR to report to the Legislature, by December 31, 2016, and based on 2015 urban water management plans, on progress toward meeting 2020 water conservation targets.
- 9) Requires state agencies to reduce water use on their facilities in support of urban retail water suppliers meeting their targets.
- 10) Requires agricultural water suppliers to implement, by July 31, 2012, certain best management practices for water use efficiency.
  - a) Requires agricultural water suppliers to implement certain “critical” best management practices:
    - i) Measure volume of water delivered to customers to implement volumetric pricing;
    - ii) Designate a water conservation coordinator;
    - iii) Make certain water management services to water users;
    - iv) Adopt a pricing structure for water customers based at least in part on quantity;
    - v) Evaluate policies of agencies providing water to agricultural water supplier for more flexible water deliveries and storage; and,
    - vi) Evaluate and improve pump efficiencies.
  - b) Requires agricultural water suppliers to implement additional best management practices if locally cost effective and technically feasible:
    - i) Facilitate alternative land use for lands with exceptionally high water use;
    - ii) Facilitate use of recycled water under certain conditions;
    - iii) Facilitate financing of capital improvements for on-farm irrigation systems;
    - iv) Implement incentive pricing structure promoting certain water use efficiency goals;
    - v) Line or pipe water distribution systems and construct regulatory reservoirs;
    - vi) Increase flexibility in water ordering by water customers within operational limits.
    - vii) Construct and operate spill and tail water recovery systems; and,

- viii) Increased planned conjunctive use of surface and groundwater storage.
  - c) Requires agricultural water suppliers to report to DWR on best management practices, allowing compliance through submission of agricultural water management plan or submission to federal Bureau of Reclamation; and,
  - d) Allows DWR to update best management practices after technical and public input and consultation with certain organizations.
- 11) Requires DWR to develop a standardized water use reporting form, specifying certain information as to compliance with conservation targets and best management practices.
- 12) Conditions water management grants/loans for urban or agricultural water suppliers on compliance with water conservation requirements, after an unspecified date, except that such suppliers may obtain funding to support water conservation, under certain conditions, or the supplier's entire service area qualifies as a disadvantaged community.
- 13) States legislative intent to use Proposition 84 bond funding for water conservation.
- 14) Requires DWR to develop a methodology for quantifying agricultural water use efficiency.
- 15) Reauthorizes provisions requiring agricultural water management plans, allowing for compliance through water conservation plans submitted to the Bureau of Reclamation or the Agricultural Water Management Council or through urban water management plans or regional water plans meeting the requirements of this part:
- a) Requires agricultural water suppliers to adopt agricultural water plans by December 31, 2011 and 2015 and every five years thereafter;
  - b) Requires agricultural water suppliers to notify cities and counties of preparation of an agricultural water management plan and allows for consultation with cities/counties;
  - c) Specifies content of agricultural water management plans, with some similarity to existing requirements for urban water management plans;
  - d) Requires certain public process for development, adoption and amendment of agricultural water management plans;
  - e) Requires DWR to prepare and submit a report summarizing and evaluating status of agricultural water management plans, including recommendations for improvements, but specifically barring DWR from critiquing individual plans;
  - f) Narrows grounds and statute of limitations for litigation challenging agricultural water management plans to examining compliance with this part;
  - g) Exempts agricultural water management plans from compliance with the California Environmental Quality Act;

- h) Conditions state water management grants/loans to agricultural water suppliers on compliance with this part; and,
  - i) Makes legislative findings and defines certain terms related to agricultural water management planning
- 16) Makes legislative findings, states legislative intent, and defines certain terms regarding water conservation.

EXISTING LAW requires "urban water suppliers" to prepare urban water management plans that consider water conservation, and conditions state funding on certain urban water conservation measures. Also, obsolete statute formerly required agricultural water suppliers to prepare agricultural water management plans by 1992. Federal law requires contractors of the federal Central Valley Project to prepare water conservation plans.

FISCAL EFFECT: Assembly Appropriations Committee estimates costs as follows:

- 1) Substantial costs likely to be paid from special funds, in the low millions of dollars from 2009-10 through 2020-21, to DWR to review urban and agricultural water conservation.
- 2) Substantial costs, in the millions of dollars annually from 2009-10 through 2020- 21, to urban water suppliers to comply with water conservation requirements, covered by revenue generated from user fees and from grants awarded from the state or federal government.
- 3) Substantial costs, in the millions of dollars from 2010-11 through 2020-21, to agricultural water suppliers to implement BMPs and adopt agricultural water management plans.
- 4) Substantial savings, in the millions of dollars annually, starting around 2014-15, to urban and agricultural water suppliers if substantially increased water conservation efforts and reduced water use results in significantly lower water supply costs.

COMMENTS: This bill responds to Governor Schwarzenegger's February 2008 call for Californians to reduce per capita water use by 20% by 2020. This bill follows an earlier effort to implement the Governor's call, AB 2175 (Laird/Feuer), which died in the Senate last year. In the meantime, a statewide drought has worsened and consensus support for greater water conservation has emerged, with environmentalists and water agencies advocating achievement of the Governor's call. The Association of California Water Agencies (ACWA) adopted principles for increasing water conservation earlier this year. Differences, however, as to how to achieve such increased conservation remain. The Delta Vision Strategic Plan identified statewide water conservation as a critical goal for improving conditions in the Delta.

Urban Water Conservation: Over the last several years, the Legislature has continued to promote greater water conservation, through water rate structures, conditions on state funding for conservation and other measures. Water agencies began making serious effort at conservation during the last major drought in the early 1990's. At that point, urban water agencies created the California Urban Water Conservation Council (CUWCC) and identified a series of "best management practices" (BMPs) for water agencies to implement, through a voluntary memorandum of understanding (MOU). Conservation achieved great success in Southern

California, whose water use now approximates levels of 30 years ago – despite a population increase of approximately 30%.

Such success in water conservation is not uniform, however, as reported by the California Bay-Delta Authority (CBDA) in 2004. CBDA reported that the number of agencies who signed the Water Conservation MOU had increased to 190, but "rates of compliance with the voluntary BMPs remain low." Today, the Sacramento region uses approximately twice the water used by Southern Californians on a per capita, per day basis.

Flexibility in Implementation: This version of the bill provides greater flexibility in how water agencies can achieve higher levels of water conservation, instead of setting specific water use targets in the bill. It sets the "20 by 2020" target (and the interim 2015 target) for the entire state and then allows water agencies the flexibility to determine their own water-use target for 2020, and then achieve that target through regional cooperation or selection of water-use sectors. The reliance on each water supplier setting its own target addresses the objection to last year's bill that it tried to make "one size fit all."

Agricultural Water Conservation: This bill relies on implementation of agricultural BMPs for water use, which have been developed, at least in part, by the Agricultural Water Management Council (AWMC). The bill creates two BMP categories – "critical" BMPs that must agricultural water suppliers (e.g., water management services and pricing structures) must implement by all and "additional" BMPs that must be implemented if the measures are locally cost effective and technically feasible. It also requires reporting on BMP implementation by agricultural water suppliers. This structure allows for water agencies to adjust to the needs of their water users, as the mandatory BMPs promote but do not actually require conservation.

Agricultural Water Management Plans: In addition to BMPs, AB 49 reauthorizes obsolete Water Code provisions that formerly required agricultural water suppliers to prepare agricultural water management plans. The Committee previously has approved this concept in three bills by former Senator Kuehl (2005-07). The Governor vetoed all three, mostly due to costs of comprehensive reporting/planning requirements in those bills.

This bill defines "agricultural water suppliers" that are required to create a plan and conserve water as those with 2000 acres of irrigated land or 2000 acre-feet of water deliveries, which is comparable to water conservation plans requirements for water agency contractors with the federal Central Valley Project, under the Central Valley Project Improvement Act. The definition of "urban water supplier" puts the threshold at 3000 connections or 3000 acre-feet of deliveries. Previous bills provided for DWR to determine the appropriate threshold for imposing requirements.

Opposition's Concerns: The agricultural community has opposed this legislation, suggesting that the requirements on agriculture are "neither necessary nor desirable." Agricultural advocates object to imposing any costs or requirements for water-use efficiency on agricultural water districts.

**SENATE COMMITTEE ON NATURAL RESOURCES AND WATER**

**Senator Fran Pavley, Chair  
2009-2010 Regular Session**

**BILL NO:** AB 49

**AUTHOR:** Feuer

**VERSION:** June 29, 2009

**DUAL REFERRAL:** No

**SUBJECT:** Water conservation: agricultural water management planning.

**HEARING DATE:** July 6, 2009

**URGENCY:** No

**CONSULTANT:** Dennis O'Connor

**FISCAL:** Yes

**BACKGROUND AND EXISTING LAW**

1. Under existing law, the California Water Plan is accepted as the master plan that guides the orderly and coordinated control, protection, conservation, development, management and efficient utilization of the water resources of the state. The Department of Water Resources (DWR) is required to update the Water Plan on or before December 31, 2003, and every five years thereafter. The plan shall include a discussion of various strategies that may be pursued in order to meet the future water needs of the state.
2. The Urban Water Management Planning Act requires urban water suppliers to prepare and submit Urban Water Management Plans (UWMPs) to DWR every five years on or before December 31, in years ending in five and zero. Among other things, the plans are required to:
  - Describe the reliability of the water supply by water year type (average, single dry year, etc.)
  - Quantify, to the extent records are available, past, current, and projected water use, identifying the uses among water use sectors (residential, commercial, etc.).
  - Describe each water demand management measure currently being implemented, or scheduled for implementation.
3. The Agricultural Water Management Planning Act required agricultural water suppliers that supply more than 50,000 acre-feet of water annually to develop agricultural water management plans by 1992. Among other things, and to the extent information was available, the reports were to address the following:
  - Current water conservation and reclamation practices being used.
  - Plans for changing current water conservation plans.
  - Conservation educational services being used.
  - Whether the supplier, through improved irrigation water management, has a significant opportunity to do one or both of the following:

- Save water by means of reduced evapotranspiration, evaporation, or reduction of flows to unusable water bodies that fail to serve further beneficial uses.
  - Reduce the quantity of highly saline or toxic drainage water.
4. Existing law makes the terms of, and eligibility for, a water management grant or loan made to an urban water supplier and awarded or administered by the department, state board, or California Bay-Delta Authority or its successor agency conditioned on the implementation of the water demand management measures identified in the Urban Water Management Planning Act.
  5. Under Federal law (Section 210 Public Law 97-293 of 1982) all CVP contractors are required to develop water conservation plans. In 1993, the Central Valley Project Improvement Act (CVPIA) Section 3405(e) required the Bureau of Reclamation to develop criteria to determine the adequacy of the water conservation plans required by Section 210. The Bureau adopted the criteria in 1993 and the most recent update was done in 2005.
  6. On February 28, 2008 Governor Schwarzenegger sent a letter to Senators Perata, Steinberg, and Machado in response to their concerns that his administration was unilaterally beginning work on a “peripheral canal.” In that letter, the Governor identified administrative actions he was considering as part of a comprehensive solution in the Delta. Included in that letter was the following “key element”:

**“1. A plan to achieve a 20 percent reduction in per capita water use statewide by 2020.**

Conservation is one of the key ways to provide water for Californians and protect and improve the Delta ecosystem. A number of efforts are already underway to expand conservation programs, but I plan to direct state agencies to develop this more aggressive plan and implement it to the extent permitted by current law. I would welcome legislation to incorporate this goal into statute.”

## **PROPOSED LAW**

1. This bill would require the state to achieve a 20% reduction in urban per capita water use in California by December 31, 2020. The state would be required to make incremental progress towards this goal by reducing per capita water use by at least 10% on or before December 31, 2015.
2. The bill would define several terms, including:
  - “Agricultural water supplier” – a water supplier that provides water to an unspecified number of acres of agricultural land, excluding recycled water.
  - “Base daily per capita water use”
    - The urban retail water supplier’s estimate of its average gross daily water use per capita, measured in gallons per capita per day (gpcd) and calculated over a continuous 10-year period ending in 2004 or later.
    - For an urban retail water supplier that meets at least 10 percent of its 2008 metered retail water demand through recycled water, the urban retail water supplier may extend the calculation of base daily per capita water use up to an additional five years, to a maximum of a continuous 15-year period ending in 2004 or later.
    - For an urban water supplier that was a member of the California Urban Water Conservation Council (CUWCC) before 1994, and whose base daily per capita water use is at or below a specific state hydrologic region target, the urban retail water



supplier's estimate of its average gross daily water use per capita, reported in gpcd and calculated over a continuous five-year period ending in 2007 or later.

- “Baseline commercial, industrial, and institutional water use” – an urban retail water supplier's base daily per capita water use for commercial, industrial, and institutional (CII) users.

3. The bill would require each urban retail water supplier to:

- Develop an urban water use target and interim urban water use targets by December 31, 2010. Urban water use target and interim urban water use targets would be defined as follows:
  - Urban water use target would be one of the following:
    - (a) 80% of the baseline daily per capita water use.
    - (b) Calculated as follows:
      - For indoor residential water use, 55 gpcd.
      - For landscape irrigated through dedicated or residential meters, water efficiency equivalent to the standards of the Model Water Efficient Landscape Ordinance.
      - For CII uses, a 10-percent reduction in water use from the baseline CII use by 2015. Upon completion of a CII task force report, targeted savings for 2020 shall be based on the CII efficiency standards by the task force. If the task force report is not completed by April 1, 2012, the 10-percent targeted reduction in water use shall be extended from 2015 to 2020.
    - (c) For an urban water supplier that was a member of the CUWCC before 1994, and whose base daily per capita water use is at or below a specific state hydrologic region target, 95 percent of base daily per capita water use.
  - Interim urban water use targets
    - (a) The midpoint between the urban retail water supplier's base daily per capita water use and the urban retail water supplier's urban water use target for 2020.
    - (b) For urban water suppliers using the system described in (b) above, the sum of the following:
      - For indoor residential and landscape uses, the midpoint between the urban retail water supplier's base daily per capita water use and the indoor residential and landscape targets for 2020.
      - For CII uses, a 10-percent reduction from the baseline CII water use.
- Report their urban water use target and interim urban water use target in their 2010 urban water plan and report on their progress in meeting their urban water use targets in subsequent updates of their urban water management plans.

4. The bill would require agricultural water suppliers to:

- Implement all of the following critical efficient management practices:
  - Measure the volume of water delivered to customers and to implement volumetric pricing.
  - Adopt a pricing structure for water customers based at least in part on quantity delivered.
  - Designate a water conservation coordinator who will develop and implement the water management plan and prepare progress reports.



- Provide for the availability of specific water management services to water users.
- Evaluate the policies of agencies that provide the supplier with water to identify the potential for institutional changes to allow more flexible water deliveries and storage.
- Evaluate and improve the efficiencies of the supplier's pumps.
- Implement all of the following additional efficient management practices if the measures are locally cost-effective and technically feasible:
  - Facilitate alternative land use for lands with exceptionally high water duties or whose irrigation contributes to significant problems, including drainage.
  - Facilitate use of available recycled water that otherwise would not be used beneficially, that meets all health and safety criteria, and does not harm crops or soils.
  - Facilitate the financing of capital improvements for on-farm irrigation systems.
  - Implement an incentive pricing structure that promotes specified goals:
  - Line or pipe distribution systems and construct regulatory reservoirs to increase distribution system flexibility and capacity, decrease maintenance, and reduce seepage.
  - Increase flexibility in water ordering by, and delivery to, water customers within operational limits.
  - Construct and operate supplier spill and tailwater recovery systems.
  - Increase planned conjunctive use of surface and groundwater within the supplier service area.
  - Automate canal control structures.
  - Facilitate or promote customer pump testing and evaluation.
- Report to DWR on which efficient water management practices have been implemented and are planned to be implemented, an estimate of the water savings that have occurred since the last report, and an estimate of the water savings estimated to occur five and 10 years in the future. If an agricultural water supplier determines that a particular efficient water management practice is not locally cost-effective or technically feasible, the supplier would be required to submit information documenting that determination.
  - The reports would be due by December 31, 2012, and thereafter in years ending in zero and years ending in five.
  - The reporting requirements could be met through the submitting to DWR an agricultural water management plan, or a plan developed for the United States Bureau of Reclamation that is consistent with this part.

5. The bill would require DWR to:

- Develop, in consultation with the board, the California Bay-Delta Authority, the State Department of Public Health, and the Public Utilities Commission, a single standardized water use reporting form to meet the water use information needs of each agency.
- Convene, in conjunction with the CUWCC, by April 1, 2010, a task force consisting of experts to develop alternative best management practices for CII users and an assessment of the potential statewide reduction in water use in the CII sector that would result from implementation of these best management practices. The task force would be required to submit a report to the Legislature by April 1, 2012, that, among other things, would establish water use efficiency standards for CII users among various sectors of water use.

- Develop, in consultation with the Agricultural Water Management Council, academic experts, and other stakeholders, a methodology for quantifying the efficiency of agricultural water use. Alternatives to be assessed would be required to include determining efficiency levels based on crop type or irrigation system distribution uniformity. DWR would be required to report to the Legislature by December 31, 2011 on a proposed methodology and a plan for implementation. The plan would be required to include the estimated implementation costs and the types of data needed to support the methodology.
  - Review the 2015 urban water management plans and report to the Legislature by December 31, 2016, on progress towards achieving a 20-percent reduction in urban water use by 2020. The report could include recommendations on changes to water efficiency standards or urban water use targets in order to achieve the 20-percent reduction and to reflect updated efficiency information and technology changes.
  - Submit to the Legislature a series of reports by December 31, 2013, December 31, 2016, and December 31, 2021, on the agricultural efficient water management practices that have been implemented and are planned to be implemented and an assessment of how the implementation of those efficient water management practices have or will affect agricultural operations, including estimated water savings, if any.
  - Submit to the Legislature a series of reports by December 31, 2013, and thereafter in the years ending in six and years ending in one, a report summarizing the status of the Agricultural Water Management Plans required by this bill.
    - The report would be required to identify the outstanding elements of any plan adopted pursuant to this part. The report would be required to include an evaluation of the effectiveness of the Agricultural Water Management Planning Act in promoting efficient agricultural water management practices and recommendations relating to proposed changes to this part, as appropriate.
    - DWR would be authorized to update the best management practices established in this bill, in consultation with the Agricultural Water Management Council, the United States Bureau of Reclamation, and SWRCB. The best management practices for agricultural water use would be adopted or revised by DWR only after public hearings to allow participation of the diverse geographical areas and interests of the state.
6. This bill would substantially revise existing law relating to agricultural water management planning to require agricultural water suppliers to prepare and adopt agricultural water management plans with specified components by December 31, 2012, and updated on or before December 31, 2015, and on or before December 31 every 5 years thereafter.
- An agricultural water supplier that becomes an agricultural water supplier after December 31, 2012, would be required to prepare and adopt an agricultural water management plan within one year after becoming an agricultural water supplier.
  - The agricultural water supplier would be required to notify each city or county within which the supplier provides water supplies with regard to the preparation or review of the plan. The bill would require the agricultural water supplier to submit copies of the plan to the department and other specified entities.

- The bill would provide that an agricultural water supplier is ineligible to receive specified state funds if the supplier does not prepare, adopt, and submit the plan in accordance with the requirements established by the bill.
7. The bill, with certain exceptions, would condition eligibility for certain water management grants or loans to urban water suppliers, beginning July 1, 2016, and agricultural water suppliers, beginning July 1, 2013, on the implementation of water conservation requirements established by the bill.
  8. The bill would repeal on July 1, 2016, an existing requirement that conditions eligibility for certain water management grants or loan to an urban water supplier on the implementation of certain water demand management measures.

### **ARGUMENTS IN SUPPORT**

According to the Sponsors, “There is growing imperative to accelerate water use efficiency in California. The impacts of climate change, the fragility of Delta ecosystems and levees, recent court decisions limiting Delta water exports, and reduced reliability of other traditional sources demonstrate a need for prompt action to conserve precious water resources. Efficient use is the foundation of local water supply reliability, and the State must act to promote this and other critical water management strategies.”

“Using water more efficiently also saves tremendous amounts of energy. The California Energy Commission estimates that 19% of the state’s electricity and over 30% of the non-power plant natural gas use is associated with water use. Achieving these water savings is critical both to meet the state’s water supply needs and to help meet the state’s AB32 targets for reducing greenhouse gas emissions.”

Many supporters point out AB 49 would:

- Meet the Governor’s goal by requiring a 10% reduction in statewide urban per capita water use by 2015, and a 20% reduction in statewide urban per capita water use by 2020.
- Provide flexibility to water suppliers by allowing them to comply on an individual or regional basis, and by allowing them to allocate savings across customer classes in the manner they deem appropriate to their service area.
- Require agricultural water suppliers to implement specified Best Management Practices, and to report on savings from those practices.
- Require agricultural water suppliers every 5 years to prepare water management plans and submit those plans to the Department of Water Resources.

### **ARGUMENTS IN OPPOSITION**

Opponents tend to focus on one of two sets of issues, either CII water use efficiencies or requirements of agricultural water suppliers.

A coalition of manufacturing interests asserts that the bill suffers from three critical flaws:

- “First, it measures efficiency of water use in the CII setting by the arbitrary measure of gallons per day per capita among residences in the supplier’s service area. This is a meaningless measurement in the CII setting.”
- “Second, the bill combines residential and CII water use into one target, which results in arbitrary water use reductions in both sectors. The only alternative is an absolute reduction in CII water use by 10% in the next five years.”

- “Third, it fails to recognize or provide credit for existing use of recycled water and other major conservation efforts that have already taken place in the CII sector.”

A coalition of agricultural interests make two main points:

- “Agricultural interests believe the threshold [to be subject to the provisions of AB 49] should be 35,000 acres, because small irrigation districts do not have the personnel, resources or financial capacity to prepare, and adopt and implement efficient water management plans for their customers. The 35,000 acre threshold would cover approximately 75 percent of all agriculturally-applied water in the state.”
- “AB 49 is fashioned after a controversial congressional mandate for federal water contractors. The United States Bureau of Reclamation provides technical assistance and funding to assist smaller suppliers in complying with the requirements, however, AB 49 provides no such assistance.”

Most opponents also either directly or indirectly question the appropriateness of DWR taking the lead on developing, overseeing, and reporting on progress in meeting various efficiency measures.

## COMMENTS

Will It Achieve 20% By 2020? Probably not, but it depends in part on how you interpret the Governor’s call for “A plan to achieve a 20 percent reduction in per capita water use statewide by 2020.” This bill contends that the 20 percent statewide reduction should reasonably apply to all water supplied by urban water suppliers, with certain significant exceptions. One could just as reasonably assert that it should apply to all water uses, regardless of sector (urban, agriculture, environment) or water supplier (urban water supplier, agricultural water supplier, or self-supplied).

Another question is that of the base year. That is, a 20 percent reduction compared to when? The Governor first went on record calling for the 20 percent reduction in February 2008. So, one could reasonably argue that 2008 should be the basis for comparison. Others argue that since urban water management plans were last updated in 2005, and urban water management plans include an officially adopted detailed analysis of local urban water use, that 2005 should be the base year. This bill suggests that an average of the 10 year period ending in 2004 or later should be the base, as averaging evens out annual fluctuations due to climate and other variables.

One key reason this bill will probably not achieve the 20% reduction is its “credit” features for earlier conservation efforts. This credit comes in two forms.

- Base year adjustment – this bill would set the base year as an average of the 10 year period ending in 2004 or later. However, urban retail water suppliers that meet at least 10 percent of its 2008 demand through recycled water may extend the base year calculation up to an additional five years to a maximum of a continuous 15-year period ending in 2004 or later.

Each year, Californians automatically improve their water use efficiency by some amount by things such as replacing out of date water fixtures, upgrading irrigation systems, etc. Consequently, the further back in time the base year is calculated, the less efficient the water use in the base year, and the easier it is to meet the target. It also means that a 20 percent reduction in water use by an agency using the 15-year basis does not mean the same thing.

- Pre 1994 CWCC members – this bill would allow urban water suppliers that were members of the CWCC prior to 1994, and whose base daily per capita water use is at or below a specified state hydrologic region target, to only reduce baseline per capita water use by 5 percent by 2020. It would also provide that the base year be calculated on a 5-year average ending in 2007 or later. This is a tremendous discount. Depending on the number of people served by water agencies that meet this criteria, other water agencies would need to reduce their gpcd water use by significantly more than 20 percent in order for the state as a whole to meet the statewide target.

The bill does provide that by December 31, 2016, DWR is to report to the Legislature on progress towards achieving a 20-percent reduction in urban water use by 2020. And, the report *may* include recommendations on changes to water efficiency standards or urban water use targets in order to achieve the 20-percent reduction and “to reflect updated efficiency information and technology changes.” However, without some sort of future action by the Legislature, or statutory direction to DWR to develop regulations to implement the recommendations, any recommendations would not become the new standards or targets. Also, because the recommendation would be limited to reflect updated efficiency information and technology changes, the recommendations could not be focused on resolving issues associated with the crediting provisions.

Interim Target. The bill defines the 2015 interim target as the mid point between the base water use and the 2020 target. While requiring water agencies to demonstrate meaningful progress half way into implementing this new program makes sense, it is not clear why a strict mid-point calculation would be appropriate in every case. Agency A may be about to implement some program that would provide significant reductions in the near future – Agency B may be developing plans that will have a big pay-off by 2020, but not much sooner. In both cases, comparing actual 2015 water use with a mid point target would provide misleading information. Agency A’s actual 2015 water use would likely be significantly below its interim target, suggesting that it may exceed its target, Agency B’s actual 2015 water use would show just the opposite. It might be more appropriate to require water agencies to develop their plans to achieve their 2020 targets, and then report on their estimated reduction for 2015 based on their individual plans.

CII & GPCD. Population is at best tangentially related to determining CII water use. Economic output, gross receipts, enrollment, etc. are much more appropriate factors to consider in evaluating how efficiently water is being used by CII water users. When the economy is growing well, a manufacture may see an increase in water use, even while adopting highly water efficient production methods, due solely to higher output. While it is true that the Governor’s call was for a 20 percent reduction in gpcd water use, it is also true that gpcd is a flawed metric for measuring CII efficiency. It might make sense to require the CII taskforce established through this bill to recommend how to best reconcile its recommended metrics for CII efficiency in context of the requirements of this bill.

Task Force Setting Regulatory Standards. Typically, task forces recommend regulatory standards, state agencies adopt regulatory standards through the administrative law process. This bill states that the report of the CII Task Force “shall establish ...” and that for those agencies that chose to use the disaggregated approach for reaching their targets, the CII targeted savings for 2020 “shall be based on the [CII] standards ... established by the task force ... ” While the bill does include language stating that the bill would not limit the application of the administrative law process, it might make sense to make more explicit that upon completion of



the CII Task Force, DWR would initiate a regulatory process to adopt the water use efficiency standards *recommended* by the CII Task Force.

Agricultural Water Suppliers. As noted in the Background and Existing Law, the existing, though dormant, provisions of the Agricultural Water Management Planning Act required agricultural water suppliers to fully describe their service area, quantity and quality of water resources, water management practices, etc. Agricultural water suppliers were defined as a supplier providing more than 50,000 acre-feet of water annually for agricultural purposes. However, this bill has a blank for the definition of agricultural water supplier. The question is; what is the appropriate definition of an agricultural water supplier?

There are a number of approaches one might take to answer this question. One might be able to determine, based on an analysis of water agency operations, financial and technical capacity, etc., the minimum size of an agency that would not only be technically able to conduct the analysis but where the results of the analysis would be commensurate with the costs of the analysis. This is probably neither a simple nor uncontroversial approach. Another approach would be to focus on establishing parity with urban water management plans. Such an analysis would consider the percent of agricultural water that would be covered by agricultural water plans as compared to the percent of urban water covered by urban water management plans. While probably easier computationally, it may result in picking only the low hanging fruit.

Urban/Ag Equity. There are a number of instances in this bill where agricultural water suppliers are treated significantly different from urban water suppliers. For example:

- **Compliance Dates.** The bill would condition eligibility for grants or loans on complying with the requirements of the bill. Urban water suppliers must demonstrate compliance in grant or loan applications beginning July 1, 2016, agricultural water suppliers demonstrate compliance beginning July 1, 2013. Those dates coincide with the first required submissions of information to DWR under this bill.

However, water agencies do have to act earlier than 2016 – they must develop their targets by the end of 2010. It is just that the bill is silent as to what they have to do with those targets beyond including them in their urban water management plans. As urban water agencies are already required under current law to submit those plans to DWR, it might make sense from both an accountability and an equitability perspective to condition loans and grants to urban water suppliers on including their targets in the urban water management plans that are due 12/31/10.

- **Causes of Action –** Under this bill, any action or proceeding to attack, review, set aside, etc. the acts or decisions of an agricultural water supplier on the grounds of noncompliance the provisions of the Agricultural Water Management Planning Act, would be required to be brought pursuant to Section 1085 of the Code of Civil Procedure (regarding writs of mandate). Moreover, the court’s review of compliance or noncompliance would extend only to whether the plan, or portion thereof, or revision thereto, substantially complies with the requirements of that Act. No such language exists for urban water management plans.

The author should be encouraged to resolve any inappropriate differences in treatment of the two water using sectors.

Related Bills: SB 261 (Dutton & Ducheny) requires urban water supplier to develop and implement a water use efficiency and efficient water resources management plan to reduce per

capita residential water use by 20 percent, creates a task force to develop best management practices for CII water uses, and revises and updates requirements under the Agricultural Water Management Planning Act.

While AB 49 and SB 261 both attempt to implement the Governor's call for a 20 percent reduction in per capita water use by 2020, they take significantly different approaches. Most fundamentally, AB 49 is focused on achieving the goal by greater water use efficiency – squeezing more out of each drop. SB 261, which includes water use efficiency options, is focused more on improvements in water resources management – freeing up more drops.

Work In Progress. This bill has been heavily negotiated and heavily amended. In addition to the issues raised above, this bill has a number of confusing or otherwise incomplete provisions, such as how “compliance daily per capita water use” relates to “base daily per capita use” and “urban water use target.” There are conflicting provisions whether “the state shall achieve” a 20-percent reduction or whether “it is the intent of the Legislature that” these provisions result in a 20-percent reduction. There are other areas requiring additional attention as well.

Should the committee decide to move this bill forward, the committee may wish to seek a commitment from the author to continue to work closely with committee staff to resolve the various issues raised by this analysis.

**SUGGESTED AMENDMENTS:** None

#### **SUPPORT**

Metropolitan Water District of Southern California (Sponsor)  
Natural Resources Defense Council (Sponsor)  
Aerospace Cancer Museum of Education  
Amigo de los Rios  
CA ReLeaf  
California League of Conservation Voters  
California Sportfishing Protection Alliance  
California State Grange  
California Striped Bass Association West Delta Chapter  
California Urban Forests Council  
Central Basin Municipal Water District  
City of Los Angeles  
Clean Up Rocketdyne  
Clean Water Action  
Contra Costa Water District  
Defenders of Wildlife  
Diablo Valley Fly Fishermen  
Environmental Defense Fund  
Environmental Entrepreneurs  
Food and Water Watch  
Friends of the River  
Green Plumbers USA  
Heal the Bay  
Inland Empire Utilities Agency  
Irvine Ranch Water District  
Mountains Recreation and Conservation Authority  
National Parks Conservation Association



Northern California/Nevada Council Federation of Fly Fishers  
Pacific Coast Federation of Fishermen's Associations  
Pacific Institute  
Sierra Club California  
Sierra Nevada Alliance  
Sonoma County Water Agency  
The Bay Institute  
Three Valleys Municipal Water District  
TreePeople  
Upper San Gabriel Valley Municipal Water District  
Water 4 Fish  
West Basin Municipal Water District  
1 Individual

## **OPPOSITION**

Agricultural Council of California  
Association of California Water Agencies  
California Association of Nurseries and  
Garden Centers  
California Association of Wheat Growers  
California Association of Winegrape  
Growers  
California Bean Shippers  
California Cattlemen's Association  
California Chamber of Commerce  
California Citrus Mutual  
California Cotton Growers and Ginners  
Associations  
California Farm Bureau Federation  
California Grain and Feed  
California League of Food Processors  
California Manufacturers and Technology  
Association  
California Nevada Soft Drink Association  
California Pear Growers  
California Retailers Association  
California Rice Commission  
California State Floral Association  
California Warehouse Association  
Chemical Industry Council of California  
City of Lakewood  
Family Winemakers of California  
Friant Water Authority  
Grocery Manufacturers Association  
Imperial Irrigation District  
Industrial Environmental Association  
Irrigation Association  
Kern County Water Agency  
Modesto Irrigation District  
Nisei Farmers League  
Northern California Water Association

Pacific Egg and Poultry Association  
Regional Council of Rural Counties  
Santa Barbara Technology and Industry  
Association  
Solano County Water Agency  
Tule River Association  
Valley Ag Water Coalition  
Western Growers  
Western States Petroleum Association  
Wine Institute

CONCURRENCE IN SENATE AMENDMENTS

AB 49 (Feuer and Huffman)

As Amended July 9, 2009

Majority vote

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ASSEMBLY:	(June 3, 2009)	SENATE:	21-13 (July 13, 2009)
(vote not relevant)			

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Original Committee Reference: W., P., & W.

SUMMARY: States legislative intent to establish a 20% water efficiency requirement for the year 2020 for agricultural and urban water users.

The Senate amendments delete the Assembly version of this bill, and instead state only legislative intent.

EXISTING LAW requires "urban water suppliers" to prepare urban water management plans that consider water conservation, and conditions state funding on certain urban water conservation measures. Also, obsolete statute formerly required agricultural water suppliers to prepare agricultural water management plans by 1992. Federal law requires contractors of the federal Central Valley Project to prepare water conservation plans.

FISCAL EFFECT: None

COMMENTS: This bill responds to Governor Schwarzenegger's February 2008 call for Californians to reduce per capita water use by 20% by 2020. This bill follows an earlier effort to implement the Governor's call, AB 2175 (Laird/Feuer), which died in the Senate last year. In the meantime, a statewide drought has worsened and consensus support for greater water conservation has emerged, with environmentalists and water agencies advocating achievement of the Governor's call. The Association of California Water Agencies (ACWA) adopted principles for increasing water conservation earlier this year. Differences, however, as to how to achieve such increased conservation remain. The Delta Vision Strategic Plan identified statewide water conservation as a critical goal for improving conditions in the Delta.

This year, the Legislature has examined closely the recommendations in the Delta Vision Strategic Plan, including those related to water conservation. Bi-cameral and bi-partisan working groups discussed the issues arising out of the Delta crisis. Several members introduced bills on a wide range of water issues, based at least in part on the Task Force's Strategic Plan. Two water conservation bills – AB 49 and SB 261 (Dutton) – proceeded through full legislative review, and several legislators suggested publicly that the two conservation bills be sent to a conference committee. At the same time, several Delta bills were chosen for a conference committee. This bill, as amended by the Senate, simply states legislative intent to establish a 20% water conservation requirement. The author intends that, if a conference committee is convened, this bill would be included in conference.

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

PROPOSED CONFERENCE REPORT NO. 1 - September 9, 2009  
AB 49 (Feuer and Huffman)  
As Amended July 9, 2009  
Majority vote

ASSEMBLY:	43-30 (June 3, 2009)	SENATE:	(July 13, 2009)
		(vote not relevant)	

<u>ASSEMBLY CONFERENCE VOTE:</u>	4-0	<u>SENATE CONFERENCE VOTE:</u>	4-0
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Ayes: Bass, Caballero, Huffman, Solorio	Ayes: Steinberg, Florez, Padilla, Pavley
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Original Committee Reference: W., P. & W.

SUMMARY: Requires a 20% reduction in urban per capita water use in California by December 31, 2020, and agricultural water management plans for agricultural water suppliers, and promotes expanded development of sustainable water supplies at the regional level. Specifically, the conference committee amendments:

- 1) Establish a statewide urban water conservation target:
  - a) Require urban per capita water use to be reduced by 10% reduction by 2015; and,
  - b) Require urban per capita water use to be reduced by 20% by 2020.
- 2) Establish a process for urban water suppliers to meet the targets:
  - a) Define urban retail water supplier as one that directly provides municipal water to more than 3,000 end users or supplies more than 3,000 acre-feet of water annually;
  - b) Require urban retail water suppliers, individually or on a regional basis, to develop an urban water use target by December 31, 2010;
  - c) Require each urban water supplier to meet their target by 2020, and to meet an interim target by 2015, defined as half of their 2020 target;
  - d) Provide three methodologies for urban water suppliers to choose from to develop their water use target:
    - i) A 20% reduction in baseline daily per capita use, or
    - ii) A methodology that combines efficiency standards for residential indoor use [55 gallons per capita daily (gpcd)]; residential outdoor use (Model Water Efficient Landscape Ordinance); and commercial, industrial, and institutional (CII) use (10 % reduction); or,
    - iii) A 5% reduction in the DWR regional targets for gpcd.

- e) Require minimum 5 % reduction in base water use by 2020 for all urban water suppliers.
  - f) Allow recycled water to count toward meeting urban supplier's water use target if recycled water offsets potable water demands.
  - g) Require urban water suppliers to report in their urban water management plans due in 2010 the identified targets in 2010, and to report progress in meeting the targets every five years in subsequent updates of their urban water management plans;
  - h) Allow urban suppliers to consider the following when determining compliance:
    - i) Weather differences between the base year and current reporting year;
    - ii) Substantial changes in commercial and industrial water use due to increase business output and economic development; and,
    - iii) Substantial changes to institutional water use resulting from fire suppression or other extraordinary events
  - i) Require urban water suppliers to hold public hearings to allow for community input on the supplier's implementation plan for meeting their water use target, and requires the implementation to avoid placing a disproportionate burden on any customer sector;
  - j) Prohibit urban suppliers from requiring changes that would reduce the use of process water – defined in the bill as water used in production of a product. The bill would also allow an urban water supplier to exclude process water from the calculation of gross water supply if a substantial amount of the water provided in the service area is for industrial use; and,
  - k) Condition eligibility for water management grants and loans on an urban water supplier's compliance with meeting the requirements established by the bill.
- 3) Require DWR review and reporting:
- a) Require DWR to review the 2015 urban water management plans and report to the Legislature by 2016 on progress in meeting the 20% statewide target; and,
  - b) The report could include recommendations on changes to the standards or targets in order to achieve the 20% reduction in per capita use.
- 4) Create a CII Task Force:
- a) Require DWR to establish the task force by 2010 in conjunction with the California Urban Water Conservation Council; and,
  - b) Require the CII task force to develop best management practices (BMPs); assess the potential for statewide water savings if the BMPs are implemented; and report to the Legislature by 2012 on proposed water use efficiency standards for CII users based on several considerations.

- 5) Define agricultural water supplier as a supplier that provides water to 10,000 or more of irrigated acres, excluding recycled water used for irrigation.
- 6) Require Agricultural Water Management Plans:
  - a) Require agricultural water suppliers to prepare and implement water management plans, with specified components, by 2012 and update the plans every five years; and,
  - b) Require DWR to review the plans and report to the Legislature every five years on the status of the plans, and the effectiveness of the plans in promoting efficient agricultural water management practices.
- 7) Require Efficient Agricultural Water Management Practices
  - a) Require all agricultural water suppliers to implement 6 critical efficient water management practices (EWMPs). Ten additional EWMPs would be required only if they are locally cost effective and technically feasible; and,
  - b) Establish the six critical EWMPs as:
    - i) Measure water deliveries to customers to a level of accuracy needed to implement a pricing structure that is based in part on the quantity of water delivered;
    - ii) Designate a water conservation coordinator;
    - iii) Provide water management services to customers;
    - iv) Adopt a pricing structure that is based at least in part on the quantity of water delivered to customers;
    - v) Identify potential for more flexible water deliveries and storage; and,
    - vi) Evaluate and improve efficiency of the suppliers pumps
  - c) Allow DWR to update the efficient water management practices in consultation with the Agricultural Water Management Council, the board, and the U.S. Bureau of Reclamation, after public hearings; and,
  - d) Condition eligibility for water management grants and loans on an agricultural water suppliers' compliance with meeting the requirements for implementation of efficient water management practices.
- 8) Establish Agricultural Water Reporting Requirements:
  - a) Require agricultural water suppliers to:
    - i) Report to DWR in 2012 and every five years thereafter, on what practices have been implemented, and an estimate of the water savings expected; and,

- ii) Submit documentation to DWR supporting a determination that practice is not locally cost effective or technically feasible.
  - b) Require DWR to report to the Legislature on 2013, 2016, and 2021 on the status of implementing the efficient water management practices and the associate water savings; and,
  - c) Require DWR to provide technical or financial assistance to smaller agricultural water suppliers (defined as serving between 10,000 and 25,000 irrigated acres) for development of management plans.
- 9) Requires DWR to promote implementation of regional water resource management practices through increased incentives/removal of barriers and specifies potential changes.
- 10) Require DWR, in consultation with SWRCB, to develop new statewide targets or review and update existing targets for regional water resource management practices including but not limited to recycled water, brackish groundwater desalination, and urban stormwater runoff.

EXISTING LAW requires "urban water suppliers" to prepare urban water management plans that consider water conservation, and conditions state funding on certain urban water conservation measures. Also, obsolete statute formerly required agricultural water suppliers to prepare agricultural water management plans by 1992. Federal law requires contractors of the federal Central Valley Project to prepare water conservation plans.

AS PASSED BY THE ASSEMBLY, this bill was substantially similar to the version passed by the Conference Committee.

The Senate amendments delete all the substantive provisions of this bill.

FISCAL EFFECT: The Assembly Appropriations Committee estimates substantial costs likely to be paid from special funds, in the low millions of dollars from 2009-10 through 2020-21, to DWR to review urban and agricultural water conservation efforts.

COMMENTS: This bill includes four key components for promoting improvement in the statewide management of water resources – urban water conservation, "commercial, industrial, and institutional" (CII) water management, agricultural water management, and sustainable water management. Each of these components raises important issues for the committee.

Urban Water Conservation: This bill would establish a statewide target to reduce urban per capita water use by 20 percent by 2020. This target is consistent with the Governor's February 2008 proposal. The Delta Vision Strategic Plan also recommended legislation requiring "Urban water purveyors to implement measures to achieve a 20 percent reduction in urban per capita water use statewide throughout California by December 31, 2020."

While most interest groups agree with the goal of improving efficient water use and water resources management, there is a dispute as to how best to do so. This bill focuses on achieving the goal by greater water use efficiency – reducing demand. This bill would require urban retail water suppliers, individually or on a regional basis, to develop an urban water use target by



December 31, 2010, would require each urban water supplier to meet their target by 2020, and to meet an interim target (half of their 2020 target) by 2015.

Flexibility. AB 49 provides options for how water agencies can achieve higher levels of water conservation but requires those options to meet a per capita reduction in water use. The bill sets the “20 by 2020” target (and the interim 2015 target) for the entire state and then allows water agencies to choose one of three methods for determining their own water-use target for 2020. Water suppliers also can choose to join with a broader group of suppliers to meet the targets regionally. Finally the bill provides urban water suppliers with the option of shifting more water use to recycled water to meet their targets.

Commercial, Industrial and Institutional (CII) Water Management: This bill would require an urban water supplier to meet a conservation target that could affect any urban sector of water use, except it restricts the ability of an urban supplier from imposing conservation action on process water. The bill would require urban water suppliers to avoid disproportionate impacts on any one sector and requires an open transparent process for all water customers to review and provide input into the water supplier implementation plan. One of the options for a supplier to develop a water use target includes a methodology for estimating reductions in each sector – which includes a 10% reduction in CII. This 10% reduction is part of the target development and does not dictate the method of implementing or meeting the target. Conference Committee amendments reduced concerns of CII water users.

Agricultural Water Management: This bill relies on implementation of efficient water management practices (EWMPs) for water use, which have been developed, at least in part, by the Agricultural Water Management Council (AWMC). The bill creates two EWMP categories: “critical” that all agricultural water suppliers (*e.g.* water management services and pricing structures) must implement and “additional” EWMPs that must be implemented if the measures are locally cost effective and technically feasible. The mandatory EWMPs are the same 6 measures currently required of all federal water contractors (such as Westlands WD and Friant WA) since 1992 under the Central Valley Project Improvement Act (CVPIA).

Agricultural Water Management Plans: This bill reauthorizes dormant provisions of the Water Code that required agricultural water suppliers to prepare agricultural water management plans. This places agricultural water suppliers on an equal footing with urban suppliers who have been required to prepare and submit water management plans for approximately 15 years. The Legislature previously approved this concept in three bills by former Senator Kuehl (2005-07). Although the Governor vetoed those bills, his reasons were not related to this concept.

One key difference between this bill, the dormant provisions of current law, and previous years’ bills is the definition of “agricultural water suppliers” – the agencies that would be required to comply with these provisions. This bill defines agricultural water suppliers as those with 10,000 acres of irrigated land. The previous definition was a supplier providing more than 50,000 acre-feet of water for agricultural purposes. The definition for federal water contractors served by the Central Valley Project is 2,000 acres or acre-feet served. Agricultural interests oppose the lower threshold of 2,000 stating that Bureau of Reclamation essentially does all the work for those smaller agencies. The definition of “urban water supplier” puts the threshold at 3000 connections or 3000 acre-feet of deliveries. Previous years’ bills provided for DWR to determine the appropriate threshold for imposing requirements.



Sustainable Water Management: One of the tensions among different interest groups is whether the water use efficiency program should include both demand reduction and increased water supplies and what type of mandates or incentives should be used to motivate compliance. This bill begins to address those tensions by requiring DWR to develop incentives for sustainable water management and alternative water supplies such as brackish water desalination and stormwater recovery.

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

FN: 0003142

**SENATE RULES COMMITTEE**

AB 49

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THIRD READING

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Bill No: AB 49

Author: Feuer (D)

Amended: 7/9/09 in Senate

Vote: 21

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SENATE NATURAL RES. & WATER COMMITTEE: 7-3, 7/6/09

AYES: Pavley, Kehoe, Leno, Padilla, Simitian, Wiggins, Wolk

NOES: Benoit, Hollingsworth, Huff

NO VOTE RECORDED: Cogdill

ASSEMBLY FLOOR: 43-30, 6/3/09 - See last page for vote

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**SUBJECT:** Water conservation

**SOURCE:** Author

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**DIGEST:** This bill states the intent of the Legislature to enact legislation to establish a 20 percent water efficiency requirement for the year 2020 for agricultural and urban water users.

**ANALYSIS:** Existing law requires the Department of Water Resources to undertake or administer various programs related to water conservation.

Background

Under existing law, the California Water Plan is accepted as the master plan that guides the orderly and coordinated control, protection, conservation, development, management and efficient utilization of the water resources of the state. The Department of Water Resources (DWR) is required to update the Water Plan on or before December 31, 2003, and every five years

CONTINUED

thereafter. The plan shall include a discussion of various strategies that may be pursued in order to meet the future water needs of the state.

The Urban Water Management Planning Act requires urban water suppliers to prepare and submit Urban Water Management Plans to DWR every five years on or before December 31, in years ending in five and zero. Among other things, the plans are required to:

1. Describe the reliability of the water supply by water year type (average, single dry year, etc.)
2. Quantify, to the extent records are available, past, current, and projected water use, identifying the uses among water use sectors (residential, commercial, etc.).
3. Describe each water demand management measure currently being implemented, or scheduled for implementation.

The Agricultural Water Management Planning Act required agricultural water suppliers that supply more than 50,000 acre-feet of water annually to develop agricultural water management plans by 1992. Among other things, and to the extent information was available, the reports were to address the following:

1. Current water conservation and reclamation practices being used.
2. Plans for changing current water conservation plans.
3. Conservation educational services being used.
4. Whether the supplier, through improved irrigation water management, has a significant opportunity to do one or both of the following:
5. Save water by means of reduced evapotranspiration, evaporation, or reduction of flows to unusable water bodies that fail to serve further beneficial uses.
6. Reduce the quantity of highly saline or toxic drainage water.

Existing law makes the terms of, and eligibility for, a water management grant or loan made to an urban water supplier and awarded or administered

by the department, state board, or California Bay-Delta Authority or its successor agency conditioned on the implementation of the water demand management measures identified in the Urban Water Management Planning Act.

Under Federal law (Section 210 Public Law 97-293 of 1982) all Central Valley Project contractors are required to develop water conservation plans. In 1993, the Central Valley Project Improvement Act Section 3405(e) required the Bureau of Reclamation to develop criteria to determine the adequacy of the water conservation plans required by Section 210. The Bureau adopted the criteria in 1993 and the most recent update was done in 2005.

On February 28, 2008 Governor Schwarzenegger sent a letter to Senators Perata, Steinberg, and Machado in response to their concerns that his administration was unilaterally beginning work on a “peripheral canal.” In that letter, the Governor identified administrative actions he was considering as part of a comprehensive solution in the Delta. Included in that letter was the following “key element:”

A plan to achieve a 20 percent reduction in per capita water use statewide by 2020. Conservation is one of the key ways to provide water for Californians and protect and improve the Delta ecosystem. A number of efforts are already underway to expand conservation programs, but I plan to direct state agencies to develop this more aggressive plan and implement it to the extent permitted by current law. I would welcome legislation to incorporate this goal into statute.

This bill states the intent of the Legislature to enact legislation to establish a 20 percent water efficiency requirement for the year 2020 for agricultural and urban water users.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:** (Verified – reflects prior version)

Metropolitan Water District of Southern California (source)

Natural Resources Defense Council (source)

Aerospace Cancer Museum of Education

Amigo de los Rios

CA ReLeaf

CONTINUED

California League of Conservation Voters  
California Sportfishing Protection Alliance  
California State Grange  
California Striped Bass Association West Delta Chapter  
California Urban Forests Council  
Central Basin Municipal Water District  
City of Los Angeles  
Clean Up Rocketdyne  
Clean Water Action  
Contra Costa Water District  
Defenders of Wildlife  
Diablo Valley Fly Fishermen  
Environmental Defense Fund  
Environmental Entrepreneurs  
Food and Water Watch  
Friends of the River  
Green Plumbers USA  
Heal the Bay  
Inland Empire Utilities Agency  
Irvine Ranch Water District  
Mountains Recreation and Conservation Authority  
National Parks Conservation Association  
Northern California/Nevada Council Federation of Fly Fishers  
Pacific Coast Federation of Fishermen's Associations  
Pacific Institute  
Sierra Club California  
Sierra Nevada Alliance  
Sonoma County Water Agency  
The Bay Institute  
Three Valleys Municipal Water District  
TreePeople  
Upper San Gabriel Valley Municipal Water District  
Water 4 Fish  
West Basin Municipal Water District

**OPPOSITION:** (Verified – reflects prior version)

Agricultural Council of California  
Association of California Water Agencies  
California Association of Nurseries and Garden Centers  
California Association of Wheat Growers

CONTINUED

California Association of Winegrape Growers  
California Bean Shippers  
California Cattlemen's Association  
California Chamber of Commerce  
California Citrus Mutual  
California Cotton Growers and Ginners Associations  
California Farm Bureau Federation  
California Grain and Feed  
California League of Food Processors  
California Manufacturers and Technology Association  
California Nevada Soft Drink Association  
California Pear Growers  
California Retailers Association  
California Rice Commission  
California State Floral Association  
California Warehouse Association  
Chemical Industry Council of California  
City of Lakewood  
Family Winemakers of California  
Friant Water Authority  
Grocery Manufacturers Association  
Imperial Irrigation District  
Industrial Environmental Association  
Irrigation Association  
Kern County Water Agency  
Modesto Irrigation District  
Nisei Farmers League  
Northern California Water Association  
Pacific Egg and Poultry Association  
Regional Council of Rural Counties  
Santa Barbara Technology and Industry Association  
Solano County Water Agency  
Tule River Association  
Valley Ag Water Coalition  
Western Growers  
Western States Petroleum Association  
Wine Institute

**ASSEMBLY FLOOR:**

AYES: Ammiano, Beall, Blumenfield, Brownley, Buchanan, Carter, Chesbro, Coto, Davis, De La Torre, De Leon, Eng, Evans, Feuer, Fong, Fuentes, Furutani, Hall, Hayashi, Hernandez, Hill, Huffman, Jones, Krekorian, Lieu, Bonnie Lowenthal, Ma, Mendoza, Monning, Nava, John A. Perez, Portantino, Price, Ruskin, Salas, Saldana, Skinner, Solorio, Swanson, Torlakson, Torres, Torrico, Bass

NOES: Adams, Anderson, Arambula, Bill Berryhill, Tom Berryhill, Blakeslee, Conway, Cook, DeVore, Duvall, Emmerson, Fuller, Gaines, Garrick, Gilmore, Hagman, Harkey, Huber, Jeffries, Knight, Logue, Nestande, Niello, Nielsen, V. Manuel Perez, Silva, Smyth, Audra Strickland, Tran, Villines

NO VOTE RECORDED: Block, Caballero, Charles Calderon, Fletcher, Galgiani, Miller, Yamada

CTW:nl 7/10/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**\*\*\*\* END \*\*\*\***



**SENATE RULES COMMITTEE**AB 49

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**CONFERENCE COMPLETED**

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Bill No: AB 49

Author: Feuer (D)

Amended: Proposed Conference Report No. 1 - 9/9/09

Vote: 21

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**CONFERENCE COMMITTEE VOTE:** 8-0, 9/9/09AYES: Senators Steinberg, Pavley, Padilla, and Florez, Assembly Members Bass, Huffman, Caballero, and Solorio

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**SUBJECT:** Water conservation: urban and agricultural water management planning**SOURCE:** Author

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**DIGEST:** Conference Committee Amendments delete the prior version of the bill stating the intent of the Legislature to enact legislation to establish a 20 percent water efficiency requirement for the year 2020 for agricultural and urban water users. This bill now requires the state to achieve a 20 percent reduction in urban water use in California by December 31, 2020 and requires agricultural water supplies to prepare and adopt agricultural water management plans with specified components by December 31, 2012, and update those plans every five year. Lastly, the bill becomes operative only if the other comprehensive water bills are enacted: AB 39 (Huffman), SB 12 (Simitian), SB 229 (Pavley), and SB 458 (Steinberg and Simitian).

**ANALYSIS:** Existing law requires the Department of Water Resources to convene an independent technical panel to provide information to the department and the Legislature on new demand management measures, technologies, and approaches. "Demand management measures" means those water conservation measures, programs, and incentives that prevent

CONTINUED

the waste of water and promote the reasonable and efficient use and reuse of available supplies.

This bill requires the state to achieve a 20 percent reduction in urban per capita water use in California by December 31, 2020. The state would be required to make incremental progress towards this goal by reducing per capita water use by at least 10 percent on or before December 31, 2015. The bill requires each urban retail water supplier to develop urban water use targets and an interim urban water use target, in accordance with specified requirements. The bill requires agricultural water suppliers to implement efficient water management practices. The bill requires the department, in consultation with other state agencies, to develop a single standardized water use reporting form. The bill, with certain exceptions, conditions eligibility for certain water management grants or loans to urban water suppliers, beginning July 1, 2016, and agricultural water suppliers, beginning July 1, 2013, on the implementation of water conservation requirements established by the bill. The bill repeals on July 1, 2016, an existing requirement that conditions eligibility for certain water management grants or loans to an urban water supplier on the implementation of certain water demand management measures.

Existing law, until January 1, 1993, and thereafter only as specified, requires certain agricultural water suppliers to prepare and adopt water management plans.

This bill substantially revises existing law relating to agricultural water management planning to require agricultural water suppliers to prepare and adopt agricultural water management plans with specified components on or before December 31, 2012, and update those plans on or before December 31, 2015, and on or before December 31 every five years thereafter. An agricultural water supplier that becomes an agricultural water supplier after December 31, 2012, would be required to prepare and adopt an agricultural water management plan within one year after becoming an agricultural water supplier. The agricultural water supplier would be required to notify each city or county within which the supplier provides water supplies with regard to the preparation or review of the plan. The bill would require the agricultural water supplier to submit copies of the plan to the department and other specified entities. The bill provides that an agricultural water supplier is ineligible to receive specified state funds if the supplier does not prepare, adopt, and submit the plan in accordance with the requirements established by the bill.

The provisions of the bill only become operative if AB 39, SB 12, SB 229, and SB 458 of the 2009-10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.

### Background

Under existing law, the California Water Plan is accepted as the master plan that guides the orderly and coordinated control, protection, conservation, development, management and efficient utilization of the water resources of the state. The Department of Water Resources (DWR) is required to update the Water Plan on or before December 31, 2003, and every five years thereafter. The plan shall include a discussion of various strategies that may be pursued in order to meet the future water needs of the state.

The Urban Water Management Planning Act requires urban water suppliers to prepare and submit Urban Water Management Plans to DWR every five years on or before December 31, in years ending in five and zero. Among other things, the plans are required to:

1. Describe the reliability of the water supply by water year type (average, single dry year, etc.)
2. Quantify, to the extent records are available, past, current, and projected water use, identifying the uses among water use sectors (residential, commercial, etc.).
3. Describe each water demand management measure currently being implemented, or scheduled for implementation.

The Agricultural Water Management Planning Act required agricultural water suppliers that supply more than 50,000 acre-feet of water annually to develop agricultural water management plans by 1992. Among other things, and to the extent information was available, the reports were to address the following:

1. Current water conservation and reclamation practices being used.
2. Plans for changing current water conservation plans.
3. Conservation educational services being used.

CONTINUED

4. Whether the supplier, through improved irrigation water management, has a significant opportunity to do one or both of the following:
5. Save water by means of reduced evapotranspiration, evaporation, or reduction of flows to unusable water bodies that fail to serve further beneficial uses.
6. Reduce the quantity of highly saline or toxic drainage water.

Existing law makes the terms of, and eligibility for, a water management grant or loan made to an urban water supplier and awarded or administered by the department, state board, or California Bay-Delta Authority or its successor agency conditioned on the implementation of the water demand management measures identified in the Urban Water Management Planning Act.

Under Federal law (Section 210 Public Law 97-293 of 1982) all Central Valley Project contractors are required to develop water conservation plans. In 1993, the Central Valley Project Improvement Act Section 3405(e) required the Bureau of Reclamation to develop criteria to determine the adequacy of the water conservation plans required by Section 210. The Bureau adopted the criteria in 1993 and the most recent update was done in 2005.

On February 28, 2008 Governor Schwarzenegger sent a letter to Senators Perata, Steinberg, and Machado in response to their concerns that his administration was unilaterally beginning work on a “peripheral canal.” In that letter, the Governor identified administrative actions he was considering as part of a comprehensive solution in the Delta. Included in that letter was the following “key element:”

A plan to achieve a 20 percent reduction in per capita water use statewide by 2020. Conservation is one of the key ways to provide water for Californians and protect and improve the Delta ecosystem. A number of efforts are already underway to expand conservation programs, but I plan to direct state agencies to develop this more aggressive plan and implement it to the extent permitted by current law. I would welcome legislation to incorporate this goal into statute.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

CTW:DLW:nl 9/10/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*

**SENATE RULES COMMITTEE**AB 49

Office of Senate Floor Analyses

1020 N Street, Suite 524

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**CONFERENCE COMPLETED**

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Bill No: AB 49

Author: Feuer (D)

Amended: Conference Report No. 1 - 9/9/09

Vote: 21

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**CONFERENCE COMMITTEE VOTE:** 8-0, 9/9/09

AYES: Senators Steinberg, Florez, Padilla, and Pavley, Assembly Members Bass, Caballero, Huffman, and Solorio

NO VOTE RECORDED: Senators Aanestad, Cogdill, and Huff, Assembly Members Fuller, Jeffries, and Nielsen

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**SUBJECT:** Water conservation: urban and agricultural water management planning**SOURCE:** Author

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**DIGEST:** Conference Committee Amendments delete the prior version of the bill stating the intent of the Legislature to enact legislation to establish a 20 percent water efficiency requirement for the year 2020 for agricultural and urban water users. This bill now requires the state to achieve a 20 percent reduction in urban water use in California by December 31, 2020 and requires agricultural water supplies to prepare and adopt agricultural water management plans with specified components by December 31, 2012, and update those plans every five year. Lastly, the bill becomes operative only if the other comprehensive water bills are enacted: AB 39 (Huffman), SB 12 (Simitian), SB 229 (Pavley), and SB 458 (Steinberg and Simitian).

**ANALYSIS:** Existing law requires the Department of Water Resources to convene an independent technical panel to provide information to the department and the Legislature on new demand management measures, technologies, and approaches. "Demand management measures" means

CONTINUED

those water conservation measures, programs, and incentives that prevent the waste of water and promote the reasonable and efficient use and reuse of available supplies.

This bill requires the state to achieve a 20 percent reduction in urban per capita water use in California by December 31, 2020. The state would be required to make incremental progress towards this goal by reducing per capita water use by at least 10 percent on or before December 31, 2015. The bill requires each urban retail water supplier to develop urban water use targets and an interim urban water use target, in accordance with specified requirements. The bill requires agricultural water suppliers to implement efficient water management practices. The bill requires the department, in consultation with other state agencies, to develop a single standardized water use reporting form. The bill, with certain exceptions, conditions eligibility for certain water management grants or loans to urban water suppliers, beginning July 1, 2016, and agricultural water suppliers, beginning July 1, 2013, on the implementation of water conservation requirements established by the bill. The bill repeals on July 1, 2016, an existing requirement that conditions eligibility for certain water management grants or loans to an urban water supplier on the implementation of certain water demand management measures.

Existing law, until January 1, 1993, and thereafter only as specified, requires certain agricultural water suppliers to prepare and adopt water management plans.

This bill substantially revises existing law relating to agricultural water management planning to require agricultural water suppliers to prepare and adopt agricultural water management plans with specified components on or before December 31, 2012, and update those plans on or before December 31, 2015, and on or before December 31 every five years thereafter. An agricultural water supplier that becomes an agricultural water supplier after December 31, 2012, would be required to prepare and adopt an agricultural water management plan within one year after becoming an agricultural water supplier. The agricultural water supplier would be required to notify each city or county within which the supplier provides water supplies with regard to the preparation or review of the plan. The bill would require the agricultural water supplier to submit copies of the plan to the department and other specified entities. The bill provides that an agricultural water supplier is ineligible to receive specified state funds if the



supplier does not prepare, adopt, and submit the plan in accordance with the requirements established by the bill.

The provisions of the bill only become operative if AB 39, SB 12, SB 229, and SB 458 of the 2009-10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.

### Background

Under existing law, the California Water Plan is accepted as the master plan that guides the orderly and coordinated control, protection, conservation, development, management and efficient utilization of the water resources of the state. The Department of Water Resources (DWR) is required to update the Water Plan on or before December 31, 2003, and every five years thereafter. The plan shall include a discussion of various strategies that may be pursued in order to meet the future water needs of the state.

The Urban Water Management Planning Act requires urban water suppliers to prepare and submit Urban Water Management Plans to DWR every five years on or before December 31, in years ending in five and zero. Among other things, the plans are required to:

1. Describe the reliability of the water supply by water year type (average, single dry year, etc.)
2. Quantify, to the extent records are available, past, current, and projected water use, identifying the uses among water use sectors (residential, commercial, etc.).
3. Describe each water demand management measure currently being implemented, or scheduled for implementation.

The Agricultural Water Management Planning Act required agricultural water suppliers that supply more than 50,000 acre-feet of water annually to develop agricultural water management plans by 1992. Among other things, and to the extent information was available, the reports were to address the following:

1. Current water conservation and reclamation practices being used.
2. Plans for changing current water conservation plans.

CONTINUED

3. Conservation educational services being used.
4. Whether the supplier, through improved irrigation water management, has a significant opportunity to do one or both of the following:
5. Save water by means of reduced evapotranspiration, evaporation, or reduction of flows to unusable water bodies that fail to serve further beneficial uses.
6. Reduce the quantity of highly saline or toxic drainage water.

Existing law makes the terms of, and eligibility for, a water management grant or loan made to an urban water supplier and awarded or administered by the department, state board, or California Bay-Delta Authority or its successor agency conditioned on the implementation of the water demand management measures identified in the Urban Water Management Planning Act.

Under Federal law (Section 210 Public Law 97-293 of 1982) all Central Valley Project contractors are required to develop water conservation plans. In 1993, the Central Valley Project Improvement Act Section 3405(e) required the Bureau of Reclamation to develop criteria to determine the adequacy of the water conservation plans required by Section 210. The Bureau adopted the criteria in 1993 and the most recent update was done in 2005.

On February 28, 2008 Governor Schwarzenegger sent a letter to Senators Perata, Steinberg, and Machado in response to their concerns that his administration was unilaterally beginning work on a “peripheral canal.” In that letter, the Governor identified administrative actions he was considering as part of a comprehensive solution in the Delta. Included in that letter was the following “key element:”

A plan to achieve a 20 percent reduction in per capita water use statewide by 2020. Conservation is one of the key ways to provide water for Californians and protect and improve the Delta ecosystem. A number of efforts are already underway to expand conservation programs, but I plan to direct state agencies to develop this more aggressive plan and implement it to the extent permitted by current law. I would welcome legislation to incorporate this goal into statute.

CONTINUED

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

CTW:DLW:nl 9/10/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*

**SENATE COMMITTEE ON NATURAL RESOURCES AND WATER**

**Senator Fran Pavley, Chair  
2009-2010 Regular Session**

**BILL NO:** SB 261

**AUTHOR:** Dutton

**VERSION:** April 22, 2009

**DUAL REFERRAL:** No

**SUBJECT:** Water use.

**HEARING DATE:** April 28, 2009

**URGENCY:** No

**CONSULTANT:** Dennis O'Connor

**FISCAL:** Yes

**BACKGROUND AND EXISTING LAW**

Article X, Section 2 of the California Constitution, in part, “requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.” The section also provides that it is self-executing, and that the Legislature may enact laws in the furtherance of the policy contained in that section.

Section 1011 of the Water Code provides that if a water rights holder fails to use all or part of the water provided by that right because of water conservation efforts, that conserved water is considered a beneficial use and therefore not subject to forfeiture due to non-use. The section further provides that such conserved water may be sold, leased, or otherwise transferred to another water user consistent with existing law.

The Urban Water Management Planning Act requires urban water suppliers to prepare and submit Urban Water Management Plans to the Department of Water Resources (DWR) every five years on or before December 31, in years ending in five and zero. Among other things, the plans are required to:

- Describe the service area of the supplier, including current and projected population, climate, and other demographic factors affecting the supplier’s water management planning. The projected population estimates shall be in five-year increments to 20 years.
- Describe the reliability of the water supply by water year type (average, single dry year, etc.)
- Quantify, to the extent records are available, past, current, and projected water use, identifying the uses among water use sectors (residential, commercial, etc.).
- Describe each water demand management measure currently being implemented, or scheduled for implementation, including:
  - A schedule of implementation for all water demand management measures in the plan.
  - A description of the methods to be used to evaluate the effectiveness of water demand management measures in the plan.
  - An estimate of conservation savings on water use within the supplier’s service area, and the effect of the savings on the supplier’s ability to further reduce demand.
  - An evaluation of each listed water demand management measure that is not being implemented or scheduled for implementation.

Existing law makes the terms of, and eligibility for, a water management grant or loan made to an urban water supplier and awarded or administered by the department, state board, or California Bay-Delta Authority or its successor agency conditioned on the implementation of the water demand management measures identified in the Urban Water Management Planning Act.

Under the Integrated Regional Water Management Planning Act, regional water management groups may form to prepare integrated regional water management plans. Regional water management groups are groups of three or more local agencies, at least two of which have statutory authority over water supply or water management. At a minimum, integrated regional water management plans are to address:

- Protection and improvement of water supply reliability, including identification of feasible agricultural and urban water use efficiency strategies.
- Identification and consideration of the drinking water quality of communities within the area of the plan.
- Protection and improvement of water quality within the area of the plan, consistent with the relevant basin plan.
- Identification of any significant threats to groundwater resources from overdrafting.
- Protection, restoration, and improvement of stewardship of aquatic, riparian, and watershed resources within the region.
- Protection of groundwater resources from contamination.
- Identification and consideration of the water-related needs of disadvantaged communities in the area within the boundaries of the plan.

On February 28, 2008, Governor Schwarzenegger sent a letter to Senators Perata, Steinberg, and Machado in response to their concerns that his administration was unilaterally beginning work on a “peripheral canal.” In that letter, the Governor identified administrative actions he was considering as part of a comprehensive solution in the Delta. Included in that letter was the following “key element”:

**“1. A plan to achieve a 20 percent reduction in per capita water use statewide by 2020.**

Conservation is one of the key ways to provide water for Californians and protect and improve the Delta ecosystem. A number of efforts are already underway to expand conservation programs, but I plan to direct state agencies to develop this more aggressive plan and implement it to the extent permitted by current law. I would welcome legislation to incorporate this goal into statute.”

## **PROPOSED LAW**

This bill would do two main things:

1. Require each urban water supplier, or regional water management group acting on behalf of the urban water supplier, to develop and implement a water use efficiency and efficient water resources management plan.
- Urban water suppliers achieving extraordinary water use efficiency would be exempt from these requirements. Extraordinary water use efficiency would be defined as:
    - The use of less than 70 gallons per person per day for indoor residential uses and
    - The use of less than 70 percent of reference evapotranspiration for outdoor residential uses.

- The plans would be required to accomplish one or more of the following:
  - Reduce residential per capita potable water use by 20 percent by 2020 as compared to water use in 2000.
  - Reduce total residential potable water use by 2020 by a total of 20 percent as compared to the 2020 projection in the agency's 2005 urban water management plan, which reduction shall include water conservation measures already included in the 2005 urban water management plan.
  - Achieve, by 2020, extraordinary water use.
- The plan would be required to include interim milestones for each even-numbered year for progress towards achieving the 2020 target, and each reporting agency would report its progress toward reaching the 2020 target to an unspecified person or agency, using whatever metrics the reporting agency considers to be most appropriate for its circumstances.
- If an urban water supplier fails to meet an interim milestone identified in its plan, it would be:
  - Required to report its failure to DWR on the following March 1.
  - Required, within 90 days, to submit a plan to DWR to meet the next interim milestone.
  - Subject to a penalty of 20 percent of available points in any competitive grant or loan program awarded or administered by DWR, the State Water Resource Control Board (SWRCB), or the California Bay-Delta Authority until such time the urban water supplier satisfies the interim milestones.

2. Enact the Comprehensive Urban Water Efficiency Act of 2009. This act would:

- Authorize a regional water management group to submit specified water use efficiency information that is required to be included in an urban water management plan.
- Require DWR and SWRCB to award preference points totaling 20 percent of the total available points to regional water management groups in an integrated regional water management planning competitive grant program administered by DWR or SWRCB.
- Require DWR and SWRCB, by April 1, 2010, to convene a task force to develop best management practices for commercial, industrial, and institutional (CII) water uses.
  - The intent is to result in a statewide target of at least a 10-percent reduction in potable water use in the CII sector by 2020 as compared to statewide water use by that sector in 2000.
  - The task force would be composed of representatives of DWR, SWRCB, urban water suppliers, trade groups representing the CII sector, and environmental groups.
  - Operations of the task force could be funded by the participants, or by the California Urban Water Conservation Council.
  - The task force would be required to submit a report to DWR and SWRCB no later than April 1, 2011.
  - Any recommendation of the task force shall be endorsed by all members of the task force.
  - The task force report shall include a discussion of numerous subjects, including metrics, appropriate quantities of water needed for various CII activities, potential use of stormwater, recycled water, treated water, desalinated water, or other alternative sources of water, and an evaluation of whether it is feasible to reduce water use statewide in the CII sector by at least 10 percent by 2020.

- Make numerous findings and statements of Legislative intent regarding water conservation planning.

## **ARGUMENTS IN SUPPORT**

According to the author, “California’s growing population, periodic and serious drought conditions, and court-ordered supply reductions require that Californians adopt reasonable water efficiency measures that improve water supply reliability. In addition, the Governor has issued an executive order calling for a permanent reduction in per capita use by 20 percent by 2020.”

“SB 261 seeks to address these issues by moving California towards achieving the 20 percent reduction goal in a manner that (1) encourages and builds upon existing water use efficiency efforts, (2) provides flexibility to local and regional water suppliers, (3) recognizes the varying climatic conditions across the state, and (4) protects water rights. SB 261 also seeks to reflect real water use efficiency by separating out indoor and outdoor residential uses, utilizing key principles as reflected in AB 1881 (Laird) and the landscape model ordinance. Additionally, SB 261 recognizes the need to develop targets for commercial, industrial and institutional water use that are separate from those used to measure residential use; to that end, SB 261 would establish a task force to develop best management practices for the different sectors included in CII.”

“SB 261 represents a reasonable and valid approach to attaining the Governor’s statewide per capita water use reduction goal and to improving California’s water use efficiency.”

**ARGUMENTS IN OPPOSITION:** None

## **COMMENTS**

Will It Achieve 20% By 2020? Probably not, but it depends in part on how you interpret the Governors’ call for “A plan to achieve a 20 percent reduction in per capita water use statewide by 2020.” This bill contends that the 20 percent statewide reduction should reasonably apply only to residential water use, and even then within limits. Others have suggested that it applies to all urban water uses, also sometimes within limits. While no one has introduced a bill that asserts this next point, one could argue that the 20 percent applies to all water use statewide.

Another complication is the question of a base year. That is, a 20 percent reduction compared to when? The Governor first went on record calling for the 20 percent reduction in February 2008. So, one could reasonably argue that 2008 should be the basis for comparison. Others argue that since urban water management plans were last updated in 2005, and urban water management plans include an officially adopted detailed analysis of local urban water use, that 2005 should be the base year. Still others suggest that an average of 1995 – 2005 should be the base, as DWR generally has 10 years of data from its voluntary survey of urban water agencies covering those years.

Each year, Californians automatically improve their water use efficiency by some amount by things such as replacing out of date water fixtures, upgrading irrigation systems, etc. Consequently, the further back in time the base year, the less efficient the water use in the base year.

This bill uses both 2005 and 2000 as base years. In the absence of strong policy arguments to the contrary, for consistency purposes, one year should be selected. As this bill uses urban water



management plans as the vehicle for the analysis, and 2005 was the most recent year that urban water management plans were updated, 2005 should get the nod. (See Amendments 1 & 2)

Why 10% for CII? The sponsors acknowledge that 10 percent reduction goal for CII was an arbitrary figure. The Governor's goal is for a 20 percent reduction in per capita water use in 2020. This recommendation was carried forward in the Delta Vision reports as well. As the bill already requires the CII task force to evaluate of whether it is feasible to achieve the statewide conservation target in the CII sector by 2020, for consistency purposes the CII target should be changed to 20 percent. (See Amendments 3 & 4)

What About Ag? While a number water conservation bills include provisions for agricultural water users, (e.g., see related bills, below) this bill does not. The sponsors acknowledge that this was deliberate.

§10664 Is Problematic. There are two problems with this section. First, subdivision (a) (page 22, lines 18- 24) appears duplicative with the various provisions of Section 10631(l), e.g., paragraphs (1) (page 17, starting on line 35) and (4) (page 18, lines 18-23).

Second, subdivision (b) (page 22, lines 25- 33) awards regional water management groups preference points equal to 20 percent of the total available points in an integrated regional water management planning competitive grant program without qualification, simply for applying.

It is not clear why either of these subdivisions are necessary or desirable. (See Amendment 5)

§10675 Is Also Problematic. The body of this section states Legislative intent that “this Act be implemented so as to fully protect the water rights of agencies subject to this Act and that this Act not be used to reallocate water away from those persons holding water rights as of the effective date of this Act.” However, this Act, meaning the new Chapter 5 added by this bill, does nothing to change the behaviors or actions of water agencies, water users, or water rights holders. Instead, it states intent and makes findings, defines some terms, and establishes a task force.

Moreover, the provisions established in subdivisions (a), (b), and (c) to implement that intent are of particular concern.

- Inadmissible Evidence. Subdivisions (b) and (c) would provide that data related to water use efficiency, reports prepared pursuant to this chapter, or failure to achieve the water conservation or efficiency goals pursuant to this bill is inadmissible as evidence that a water supplier is not complying with the Constitutional and statutory requirements for putting water to reasonable and beneficial use. There are a number of reasons why this is ill advised. Article X Section 2, and its prohibition of waste or unreasonable use, has been called the fundamental expression of California's water policy. It is hard to see how excluding those data or reports as evidence, thereby shielding from prosecution not just legitimate water users, but also those wasting or unreasonably using water, is good policy. It is also difficult to see how such language would further the policy expressed in Article X Section 2. If the exclusion does not further that policy, it seems likely that the courts would find that the Constitution prevents the Legislature from enacting such content.
- Section 1011. As noted in the Background and Existing Law, Section 1011 provides that if a water rights holder fails to use all or part of the water provided by that right because of water

conservation efforts, that conserved water is considered a beneficial use and therefore not subject to forfeiture due to non-use. Subdivision (a) provides that any improvements in water use efficiency achieved by implementing the provisions of this bill shall be deemed conserved water subject to the protections of Section 1011. This would include conserving water that may be found to currently meet the definition of waste or unreasonable use. Under existing law, one cannot have a right to water that is wasted or unreasonably used. Consequently, the provisions of this bill regarding Section 1011 protections appear unreasonably broad.

Until such time as the provisions of Chapter 5 change to require specific actions on the part of water agencies, water users, or water rights holders, this section is unnecessary. That said, should the provisions of Chapter 5 change to require specific actions on the part of water agencies, water users, or water rights holders, it may be reasonable to ratify that nothing in this bill is intended to diminish or otherwise limit the protections of water rights provided by Section 1011.(See Amendment 6)

Technical Amendments. There are a couple of technical amendments to correct inadvertent drafting errors. (See Amendments 7 & 8)

Work in Progress. This analysis suggest a number of amendments to resolve both critical and technical issues in the current version of this bill. However, even with those amendments, this bill will include a number of unresolved issues. Should this bill move forward, the Committee may wish to ask the author to commit to working with Committee staff to resolve such issues as the bill progresses, including:

- Identifying how do you demonstrate and to whom do you report that you have “engaged in extraordinary water use efficiency?”
- Determining what happens if a water agency is currently engaged in extraordinary water use efficiency, but lapses in the future?
- Identifying to whom each reporting agency is to report its progress towards the 2020 water use efficiency and efficient water resources management target.
- Refining what information is to be included in the various reports
- Clarifying funding of the task force
- Insuring metrics deemed most appropriate for each circumstance results in apples-to-apples comparisons.
- Determining whether in addition to consensus recommendations the task force report can include majority or minority reports

Related Bills: Each of the following bills addresses achieving a 20% reduction in urban per capita water use in by 2020.

SB 460 (Wolk). Requires urban water suppliers and agricultural water suppliers to include additional information in their water management planning reports, including for each plan a detailed description and analysis of a long-term plan to reduce water use; requires the water suppliers submit their reports to an unspecified entity; and creates an unspecified entity to collect and analyze the reports.

AB 49 (Feuer & Huffman). Requires the state to achieve a 20% reduction in urban per capita water use in by 2020, with incremental progress of at least 10% by 2015, requires agricultural water suppliers to implement certain “critical” best management practices,

and requires agricultural water suppliers to implement additional best management practices if locally cost effective and technically feasible.

## **SUGGESTED AMENDMENTS**

**AMENDMENT 1** On page 18, delete lines 5 and 6

**AMENDMENT 2** On page 22, line 39, delete “2000” and insert “2005”

**AMENDMENT 3** On page 22, line 37, delete “10” and insert “20”

**AMENDMENT 4** On page 24, line 5, delete “10” and insert “20”

**AMENDMENT 5** On page 22, delete lines 18 through 33

**AMENDMENT 6** On page 24, delete lines 19 through 40, continuing on though page 25 lines 4

**AMENDMENT 7** On page 20, line 39, delete “is” and insert “are”

**AMENDMENT 8** On page 21, line 39, delete “either of the following:” and insert “residential water use that meets both of the following criteria:”

## **SUPPORT**

Santa Ana Watershed Project Authority (Sponsor)  
Elsinore Valley Municipal Water District

## **OPPOSITION**

None Received

**Senate Appropriations Committee Fiscal Summary**  
**Senator Christine Kehoe, Chair**

**SB 261 (Dutton)**

**Hearing Date:** 05/18/2009

**Amended:** 04/30/2009

**Consultant:** Brendan McCarthy

**Policy Vote:** NR&W 11-0

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**BILL SUMMARY:** SB would require urban water suppliers to develop a water use efficiency plan, generally to reduce water use by 20 percent by 2020. Water suppliers that fail to meet milestones in their plans would be penalized when applying for grant or loan funding from the state. The bill would also require the State Water Board and Department of Water Resources to convene a taskforce to develop best management practices for water use.

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<b>Fiscal Impact (in thousands)</b>				
<b><u>Major Provisions</u></b>	<b><u>2009-10</u></b>	<b><u>2010-11</u></b>	<b><u>2011-12</u></b>	<b><u>Fund</u></b>
Taskforce costs	\$410	\$410		General *

\* Costs may be reimbursed by participants.

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**STAFF COMMENTS:** This bill meets the criteria for referral to the Suspense file.

SB 261 would require each urban water supplier or regional water management group to develop and implement a plan to reduce water use through efficiency. In general, the plans would have to achieve a 20 percent reduction in water use by 2020. The plans would have to include interim milestones for measuring progress.

If an urban water supplier failed to meet the milestones in its plan, it would be subject to additional reporting requirements and would be subject to a 20 percent penalty in any competitive grant or loan solicitation by the state.

The bill would require the State Water Board and the Department of Water Resources to convene a task force to develop best management practices for commercial, industrial, and institutional water management. The intent is to reduce statewide water use from these sectors by 10 percent by 2020. The task force would include participants from state agencies, water suppliers, trade groups and others. The task force would be required to submit a report no later than April 2011.

The bill provides that costs associated with the task force may be funded by the participants or by the California Urban Water Conservation Council.

Staff notes that SB 460 (Wolk) requires urban and agricultural water suppliers to develop plans to reduce water use by 20 percent by 2020.

**Senate Appropriations Committee Fiscal Summary**  
**Senator Christine Kehoe, Chair**

**SB 261 (Dutton)**

**Hearing Date:** 05/28/2009

**Amended:** 04/30/2009

**Consultant:** Brendan McCarthy

**Policy Vote:** NR&W 11-0

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**BILL SUMMARY:** SB 261 would require urban water suppliers to develop a water use efficiency plan, generally to reduce water use by 20 percent by 2020. Water suppliers that fail to meet milestones in their plans would be penalized when applying for grant or loan funding from the state. The bill would also require the State Water Board and Department of Water Resources to convene a taskforce to develop best management practices for water use.

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<b>Fiscal Impact (in thousands)</b>				
<b><u>Major Provisions</u></b>	<b><u>2009-10</u></b>	<b><u>2010-11</u></b>	<b><u>2011-12</u></b>	<b><u>Fund</u></b>
Taskforce costs	Fully reimbursable			Special *

\* Reimbursements.

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**STAFF COMMENTS: Suspense file. As proposed to be amended.**

SB 261 would require each urban water supplier or regional water management group to develop and implement a plan to reduce water use through efficiency. In general, the plans would have to achieve a 20 percent reduction in water use by 2020. The plans would have to include interim milestones for measuring progress.

If an urban water supplier failed to meet the milestones in its plan, it would be subject to additional reporting requirements and would be subject to a 20 percent penalty in any competitive grant or loan solicitation by the state.

The bill would require the State Water Board and the Department of Water Resources to convene a task force to develop best management practices for commercial, industrial, and institutional water management. The intent is to reduce statewide water use from these sectors by 10 percent by 2020. The task force would include participants from state agencies, water suppliers, trade groups and others. The task force would be required to submit a report no later than April 2011. The estimated cost of the task force is about \$800,000 over two years. The bill provides that costs associated with the task force may be funded by the participants or by the California Urban Water Conservation Council.

Staff notes that SB 460 (Wolk) requires urban and agricultural water suppliers to develop plans to reduce water use by 20 percent by 2020.

**As proposed to be amended by the author,** the bill would require the task force participants to reimburse state agencies for the cost of convening the taskforce.

**SENATE RULES COMMITTEE**

SB 261

Office of Senate Floor Analyses

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THIRD READING

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Bill No: SB 261

Author: Dutton (R) and Ducheny (D), et al

Amended: 5/28/09

Vote: 21

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SENATE NATURAL RES. & WATER COMMITTEE: 11-0, 4/28/09

AYES: Pavley, Cogdill, Benoit, Hollingsworth, Huff, Kehoe, Leno, Padilla,  
Simitian, Wiggins, Wolk

SENATE APPROPRIATIONS COMMITTEE: 12-0, 5/28/09

AYES: Kehoe, Cox, Corbett, Denham, DeSaulnier, Hancock, Leno,  
Oropeza, Runner, Walters, Wyland, Yee

NO VOTE RECORDED: Wolk

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**SUBJECT:** Water use

**SOURCE:** Santa Ana Watershed Project Authority

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**DIGEST:** This bill requires each urban water supplier, or regional water management group acting on behalf of the urban water supplier, to develop and implement a water use efficiency and efficient water resources management plan, and enacts the Comprehensive Urban Water Efficiency Act of 2009.

**ANALYSIS:**

Existing law:

1. Requires the Department of Water Resources (DWR) to convene an independent technical panel to provide information to the department and the Legislature on new demand management measures,

CONTINUED

technologies, and approaches. “Demand management measures” means those water conservation measures, programs, and incentives that prevent the waste of water and promote the reasonable and efficient use and reuse of available supplies.

2. Requires urban water suppliers to prepare and adopt urban water management plans with specified components.

This bill:

1. Requires each urban water supplier, or regional water management group acting on behalf of the urban water supplier, to develop and implement a water use efficiency and efficient water resources management plan.
  - A. Urban water suppliers achieving extraordinary water use efficiency is exempt from these requirements. Extraordinary water use efficiency is defined as:
    - (1) The use of less than 70 gallons per person per day for indoor residential uses.
    - (2) The use of less than 70 percent of reference evapotranspiration for outdoor residential uses.
  - B. The plans are required to accomplish one or more of the following:
    - (1) Reduce residential per capita potable water use by 20 percent by 2020 as compared to water use in 2000.
    - (2) Reduce total residential potable water use by 2020 by a total of 20 percent as compared to the 2020 projection in the agency's 2005 urban water management plan, which reduction shall include water conservation measures already included in the 2005 urban water management plan.
    - (3) Achieve, by 2020, extraordinary water use.



- C. The plan is required to include interim milestones for each even-numbered year for progress towards achieving the 2020 target, and each reporting agency will report its progress toward reaching the 2020 target to an unspecified person or agency, using whatever metrics the reporting agency considers to be most appropriate for its circumstances.
  - D. If an urban water supplier fails to meet an interim milestone identified in its plan, it would be:
    - (1) Required to report its failure to DWR on the following March 1.
    - (2) Required, within 90 days, to submit a plan to DWR to meet the next interim milestone.
    - (3) Subject to a penalty of 20 percent of available points in any competitive grant or loan program awarded or administered by DWR, the State Water Resource Control Board (SWRCB), or the California Bay-Delta Authority until such time the urban water supplier satisfies the interim milestones.
2. Enacts the Comprehensive Urban Water Efficiency Act of 2009. This Act will:
- A. Require DWR and SWRCB, by April 1, 2010, to convene a task force to develop best management practices for commercial, industrial, and institutional (CII) water uses.
    - (1) The intent is to result in a statewide target of at least a 10-percent reduction in potable water use in the CII sector by 2020 as compared to statewide water use by that sector in 2000.
    - (2) The task force will be composed of representatives of DWR, SWRCB, urban water suppliers, trade groups representing the CII sector, and environmental groups.

- (3) Operations of the task force could be funded by the participants, or by the California Urban Water Conservation Council.
  - (4) The task force will be required to submit a report to DWR and SWRCB no later than April 1, 2011.
  - (5) Any recommendation of the task force shall be endorsed by all members of the task force.
  - (6) The task force report shall include a discussion of numerous subjects, including metrics, appropriate quantities of water needed for various CII activities, potential use of stormwater, recycled water, treated water, desalinated water, or other alternative sources of water, and an evaluation of whether it is feasible to reduce water use statewide in the CII sector by at least 10 percent by 2020.
- B. Allows DWR to enter into agreements with the task force participants or the California Urban Water Conservation Council to fund the state's costs to carry out the duties of the task force. If DWR determines, before May 2, 2010, that revenues pursuant to existing reimbursement agreements are insufficient to fund those costs, DWR shall impose a fee on urban water suppliers in an amount sufficient to fund the costs.
- C. Makes numerous findings and statements of legislative intent regarding water conservation planning.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>Fund</u>
Taskforce costs	Fully reimbursable			Special*

CONTINUED

\*Reimbursements

**SUPPORT:** (Verified 5/29/09)

Santa Ana Watershed Project Authority (source)  
Elsinore Valley Municipal Water District

**ARGUMENTS IN SUPPORT:** According to the author's office, California's growing population, periodic and serious drought conditions, and court-ordered supply reductions require that Californians adopt reasonable water efficiency measures that improve water supply reliability. In addition, the Governor has issued an executive order calling for a permanent reduction in per capita use by 20 percent by 2020.

CTW:do:m 5/29/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

Date of Hearing: July 7, 2009

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE  
Jared William Huffman, Chair  
SB 261 (Dutton) – As Amended: June 29, 2009

SENATE VOTE: 39-0

SUBJECT: Water Management Plans: conservation

SUMMARY: Sets a statewide goal to achieve a 20% reduction in per capita urban water use by 2020, relying on local water agency efforts, and requires agricultural water management plans. Specifically, this bill:

- 1) Requires the Department of Water Resources (DWR) to include a strategy for use of agricultural water use efficiency management programs, including costs and benefits of the efficiency improvements in on-farm distribution systems.
- 2) Defines certain terms related to water conservation and water use efficiency, including:
  - a) "Baseline" means an urban water supplier's average total residential water use in acre-feet during the 10 years ending in 2004.
  - b) "High-efficiency water use" means the sum of 55 gallons per capita, per day for indoor residential uses and 70% of evapotranspiration as outlined in the state's model water efficient landscape ordinance for outdoor residential uses.
  - c) "Local water resources management" means use of alternative sources of water, including captured stormwater, recycled water, desalination and conjunctive use of underground and surface storage, recovery of losses in conveyance systems, and reuse of water.
  - d) "Statewide aggregate water conservation goal" means the Governor's statewide aggregate goal of a 20% reduction in water use by 2020, which totals 1.74 million acre-feet.
- 3) Requires urban water suppliers to develop and implement a water conservation plan, but exempts urban water suppliers who have achieved high-efficiency water use from requirement to implement a water conservation plan.
- 4) Establishes elements of required water conservation plan, including the following:
  - a) Water-use efficiency, including urban best management practices (BMPs), climate-appropriate landscaping, and accelerated water metering.
  - b) Local water resources management, including changes in water use to match water quality with water quality objectives for each beneficial use and use of alternative local sources of water supply.
  - c) Water efficiency planning, including estimates of future conserved water from "local water resources management," indoor/outdoor residential water use, potential

implementation of measures for commercial, industrial and institutional (CII) sector.

- d) Explanation why achievement of 20% per capita water use reduction is not feasible.
  - e) Interim milestones for progress toward water agency conservation estimates.
- 5) Requires urban water suppliers that will achieve high-efficiency water use before 2020 to document their plan for such achievement, and therefore exempts such suppliers from broader water conservation plan requirement.
  - 6) Requires urban water suppliers to provide updates on their water conservation plan in their urban water management plan in 2010, 2015 and 2020.
  - 7) Requires exempt high-efficiency water agencies that fail to achieve high-efficiency water use to comply with water conservation plan requirement.
  - 8) Allows retail urban water suppliers to collaborate in water conservation plans/projects.
  - 9) Requires development of a website for reporting of specified water conservation information required to be submitted, subject to availability of bond funds for such purpose.
  - 10) Requires DWR to contract with Cal. State University Water Resources and Policy Initiative (Institute) to evaluate urban water conservation plans, based on specified information.
    - a) Requires Institute to report quantity of conserved water.
    - b) Allows retail urban water suppliers to consult with Institute regarding how to improve water supplier's water use efficiency or local water resources management program.
  - 11) Requires water suppliers estimating less than 20% reduction to submit a new plan to reduce water use by 20% or more, if 2010 urban water management plans do not reduce aggregate per capita water use by 20%.
    - a) Allows other water agencies to submit revised plans.
    - b) Requires Institute to report aggregate water use reductions based on revised plans.
  - 12) If aggregate estimated water use, based on revised 2012 plans, does not achieve 20% target:
    - a) Requires Institute to report on cost of achieving 20% reduction, with specified information.
    - b) Authorizes DWR to adopt regulations to achieve statewide 20% target, but exempts water suppliers that will achieve 20% reduction or high-efficiency water use and specifies elements of regulations.
  - 13) Requires the State Water Resources Control Board (SWRCB) and DWR to convene task force to develop best management practices for the CII (commercial, industrial and

institutional) sector.

- a) Specifies membership, chairmanship and funding for task force.
  - b) Requires task force to report specified information to SWRCB/DWR by April 1, 2011.
- 14) Allows wholesale urban water suppliers, with consent of retail urban water suppliers, to perform planning, reporting and implementation of water conservation programs, with specified reporting requirements.
- 15) Requires DWR, SWRCB and CALFED (or successor) to provide financial incentives to support water use efficiency and local water resources management measures.
- 16) Excuses from water conservation requirements any urban water supplier that begins implementing water conservation plans but encounters contrary court orders or is unable to raise sufficient revenues.
- 17) Provides for liberal construction of the bill to achieve its purpose in a manner that provides the greatest possible flexibility and discretion to local agencies and protect water rights.
- 18) Requires agricultural water suppliers (delivering water for irrigation of more than 35,000 acres of land) to prepare and adopt agricultural water management plans.
- a) Allows agricultural water suppliers to prepare plans in cooperation with other agencies.
  - b) Requires updates to the plans in years ending in 0 and 5.
  - c) Specifies required information in agricultural water management plans.
  - d) Clarifies that plans do not require water use efficiency measures that are not locally cost-effective and technically feasible.
  - e) Allows suppliers that submit plans to Agricultural Water Management Council or the U.S. Bureau of Reclamation to satisfy plan requirements with those submissions.
  - f) Allows agricultural water suppliers to consult with other public agencies.
  - g) Specifies a public process for review of agricultural water management plans, including Internet availability and distribution to public agencies.
  - h) Clarifies that SWRCB may require more information in a water conservation plan.
  - i) Makes agricultural water suppliers that do not complete plans ineligible for state funding.
- 19) Clarifies that water-use efficiency and local water resources management measures are water conservation measures that receive water rights protection.
- 20) Repeals statutory legislative findings regarding water conservation.

21) Makes legislative findings and intent regarding water conservation and water resource development.

EXISTING LAW requires "urban water suppliers" to prepare urban water management plans that consider water conservation, and conditions state funding on certain urban water conservation measures. Also, obsolete statute formerly required agricultural water suppliers to prepare agricultural water management plans by 1992. Federal law requires contractors of the federal Central Valley Project to prepare water conservation plans.

FISCAL EFFECT: Senate Appropriations Committee, analyzing a previous version, estimated completely recoverable costs for a task force on water conservation. Costs of this version of the bill are unknown at this time, although the sponsors estimated costs in the millions of dollars.

COMMENTS: This bill responds to Governor Schwarzenegger's February 2008 call for Californians to reduce per capita water use by 20% by 2020. This bill follows an earlier effort to implement the Governor's call, AB 2175 (Laird/Feuer), which died in the Senate last year. In the meantime, a statewide drought has worsened and consensus support for greater water conservation has emerged, with environmentalists and water agencies advocating achievement of the Governor's call. The Association of California Water Agencies (ACWA) adopted principles for increasing water conservation earlier this year, and supports this bill. Differences, however, as to how to achieve such increased conservation remain. An Assembly bill, AB 49 (Feuer), proposes an alternative approach to achieving the Governor's call. These conservation bills have a connection to the Sacramento-San Joaquin Delta, as increased conservation in areas that rely on water from the Delta watershed may help the Delta ecosystem. The Delta Vision Strategic Plan identified statewide water conservation as a critical goal for improving Delta conditions.

Urban Water Conservation: Over the last several years, the Legislature has continued to promote greater water conservation, through water rate structures, conditions on state funding for conservation and other measures. Water agencies began making serious effort at conservation during the last major drought in the early 1990's. At that point, urban water agencies created the California Urban Water Conservation Council (CUWCC) and identified a series of "best management practices" (BMPs) for water agencies to implement, through a voluntary memorandum of understanding (MOU). Conservation achieved great success in Southern California, whose water use now approximates levels of 30 years ago – despite a population increase of approximately 30%.

Such success in water conservation is not uniform, however, as reported by the California Bay-Delta Authority (CBDA) in 2004. CBDA reported that the number of agencies that signed the Water Conservation MOU had increased to 190, but "rates of compliance with the voluntary BMPs remain low." Today, the Sacramento region uses approximately twice the water used by Southern Californians on a per capita, per day basis.

Voluntary Process. SB 261 proposes a multi-step process to achieve the Governor's call for a 20% reduction, relying primarily on the good faith efforts of water agencies to propose their own methods and amounts of conservation. The bill does, however, mandate BMPs and conservation plans. Water agencies will have two chances to propose conservation plans, before DWR begins developing conservation regulations in 2014. The bill sponsors assert that both incentives (potential for future water conservation and infrastructure funding) and threats (potential for



DWR to regulate water conservation) will ensure all water agencies do everything they can. One bill sponsor commented: "The whole thing is predicated on future money."

It is unclear whether these voluntary efforts will succeed, and avoid DWR regulation. Waiting for two rounds of water agency submissions to a university center may delay conservation requirements for 5-6 years, until DWR can implement regulation. In the year since the Governor's call for a 20% reduction, many agencies have claimed that they should not be required to achieve the 20% reduction. Sacramento, with one of the highest per capita rates of water use, asserts that it should have a lower standard because lot size is bigger and 50% of the excess runoff flows back to the River, albeit with household pesticides and other contaminants. Last year, the city of Fairfield claimed that it is in the "area of origin" of water, does not suffer as much shortage because it gets water from the state and federal water projects north of the Delta, and therefore should have no duty to conserve water.

Bill sponsors respond that the bill mandates implementation of the CUWCC BMPs, although the bill allows the agencies to use the conservation MOU to gain an exemption if they can show that conservation measures are not locally cost-effective or technically feasible. Those agencies that assert that they should not be required to achieve the 20% target often claim that conservation is not cost-effective because their water is so cheap.

Cal State Institute. This bill proposes to rely on a Cal State University institute to determine whether the target will be achieved, and help water agencies improve their water conservation program, relying on unappropriated bond funding to pay for the Cal State program. CUWCC, which has overseen implementation of conservation BMP's since 1991, noted that the bill's proposal would duplicate much of its organizational work over the last 18 years, recreating the conservation database and agency assistance programs at a new Cal State program. The bill sponsors have expressed great confidence in the Cal State institute, but have not explained the need for creating this new program, at a substantial cost.

Local Water Resource Management. In contrast to AB 49, this bill gives credit toward water conservation for agency implementation of new water projects that create alternative water supplies, including captured stormwater, recycled water, desalination and conjunctive use of underground and surface storage, recovery of losses in conveyance systems, and reuse of water. Bill sponsors explain that allowing credit for these creative alternatives to traditional water supply development will change the perspective of water agencies, promoting water resource management instead of just water production. All these alternative supplies rely on using a drop of water multiple times, instead of losing it to runoff. While these alternatives should be encouraged, it is not clear that they achieve "conservation" as that word is commonly used.

Agricultural Water Management Plans. Much of the attention on the bill has focused on the urban component, but amendments now have added a component requiring agricultural water agencies ( $\leq 35,000$  acres) to prepare agricultural water management plans. A representative of the California Farm Bureau asserted that this proposal came from the agricultural community. In opposing AB 49, agricultural organizations called efforts to quantify agricultural water use efficiency and assess such agricultural water management plans "neither necessary nor desirable." With continued public pressure to come up with a proposal to do something for water conservation in agriculture, they have proposed these plans, which they had resisted in similar bills in recent years. This bill, however, does not provide for any assessment as to quality or achievement of the plan. They are made available to the public, but not reviewed by DWR as

previous bills had proposed. Agricultural water agencies that contract with the federal Central Valley Project, are required to submit the plans for approval to the Bureau of Reclamation.

#### REGISTERED SUPPORT / OPPOSITION:

##### Support

Association of CA Water Agencies  
CA Assoc. of Nurseries & Garden Centers  
CA Cattlemen's Association  
CA Chamber of Commerce  
CA Citrus Mutual  
CA Cotton Growers & Ginners Assoc.  
CA Farm Bureau Federation  
CA League of Food Processors  
CA Rice Commission  
Chemical Industry Council of CA  
City of Corona  
Elsinore Valley Municipal Water District  
Eastern Municipal Water District  
Friant Water Authority

Green*Plumbers* USA  
Inland Empire Economic Partnership  
Jurupa Community Services District  
Nisei Farmers League  
Northern CA Water Association  
Orange County Water District  
Regional Council of Rural Countries  
Rubidoux Community Services District  
Santa Ana Watershed Project Authority  
Valley Ag Water Coalition  
Western Growers  
Western Municipal Water District  
Western Riverside Council of Governments  
Western States Petroleum Association

##### Opposition

Aerospace Cancer Museum of Education  
CA League of Conservation Voters  
Clean Water Action  
Defenders of Wildlife  
Food and Water Watch  
Forests Forever  
Heal the Bay  
Natural Resources Defense Council

Pacific Coast Fed. of Fishermen's Assoc.  
Planning and Conservation League  
Solano Co. Water Agency (unless amended)  
Sierra Club CA  
StopWaste  
The Bay Institute  
Water4Fish

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

Date of Hearing: July 7, 2009

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#### REGISTERED SUPPORT / OPPOSITION:

##### Support

Association of CA Water Agencies  
 CA Assoc. of Nurseries & Garden Centers  
 CA Cattlemen's Association  
 CA Chamber of Commerce  
 CA Citrus Mutual  
 CA Cotton Growers & Ginners Assoc.  
 CA Farm Bureau Federation  
 CA League of Food Processors  
 CA Rice Commission  
 Chemical Industry Council of CA  
 City of Corona  
 Elsinore Valley Municipal Water District  
 Eastern Municipal Water District  
 Friant Water Authority

Green*Plumbers* USA  
 Inland Empire Economic Partnership  
 Jurupa Community Services District  
 Nisei Farmers League  
 Northern CA Water Association  
 Orange County Water District  
 Regional Council of Rural Countries  
 Rubidoux Community Services District  
 Santa Ana Watershed Project Authority  
 Valley Ag Water Coalition  
 Western Growers  
 Western Municipal Water District  
 Western Riverside Council of Governments  
 Western States Petroleum Association

##### Opposition

Aerospace Cancer Museum of Education  
 CA League of Conservation Voters  
 Clean Water Action  
 Defenders of Wildlife  
 Food and Water Watch  
 Forests Forever  
 Heal the Bay  
 Natural Resources Defense Council

Pacific Coast Fed. of Fishermen's Assoc.  
 Planning and Conservation League  
 Solano Co. Water Agency (unless amended)  
 Sierra Club CA  
 StopWaste  
 The Bay Institute  
 Water4Fish

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

Date of Hearing: August 19, 2009

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Kevin De Leon, Chair

SB 261 (Dutton) – As Amended: July 13, 2009

Policy Committee: Water, Parks and Wildlife

Vote: 9-0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY

This bill establishes a statewide goal of a 20% reduction in per-capita urban water use by 2020 through the development and implementation of water conservation plans, and requires agricultural water suppliers to prepare and adopt agricultural water management plans. (Summary continued below.)

FISCAL EFFECT

- 1) Local costs of an unknown amount, but potentially totaling in the millions of dollars, to retail urban water suppliers to develop and implement urban water conservation plans and to agricultural water suppliers to prepare and adopt agricultural water management plans.
- 2) Annual GF costs of approximately \$550,000, from 2010-11 through 2013-14, to the Department of Water Resources (DWR) to contract with the California State University Water Resources and Policy Institute for evaluation of urban water conservation plans.
- 3) One-time GF costs ranging from \$200,000 to \$500,000 (GF) to DWR to develop a Web site for reporting progress towards meeting water conservation goals.
- 4) Potential GF costs of \$100,000 in 2014 or later to DWR to develop regulations to achieve statewide water conservation goals.
- 5) Approximately \$100,000 in one-time GF costs to DWR and State Water Resources Control Board (SWRCB) to convene a task force to develop best management practices for the commercial, industrial and institutional sector, fully reimbursed by task force participants.
- 6) Cost pressures, potentially in the millions of dollars, to DWR, SWRCB, and CALFED to provide financial incentives to support water use efficiency and local water resources management measures. (Bond funds or other special funds.)
- 7) One-time GF costs of approximately \$100,000 to DWR to develop water conservation strategies to include in its update of the California Water Plan.
- 8) Minor absorbable costs to DWR to include specified information in its update of the California Water Plan.

SUMMARY (continued)

Specifically, this bill:

Urban Water Conservation

- 1) Requires each retail urban water supplier to develop and implement an urban water conservation plan to meet the goal of 20% water conservation by 2020, as compared to "baseline" water use. Such plans are to include best management practices, water savings goals, and, if applicable, an explanation of why the 20% goal will not be met.
- 2) Exempts from the urban water conservation plan requirement those urban water suppliers that have achieved "high-efficiency water use" by January 1, 2020.
- 3) Expresses the Legislature's intent that the Department of Water Resources (DWR) contract with California State University Water Resources and Policy Institute for the evaluation of urban water conservation plans.
- 4) Requires DWR, or the institute on the department's behalf, to develop a Web site for reporting progress towards meeting water conservation goals.
- 5) Authorizes DWR to adopt regulations, beginning on January 1, 2014, to achieve statewide water conservation goals if the institute's report shows inadequate progress towards meeting statewide water conservation goals.
- 6) Requires the State Water Resources Control Board (SWRCB) and DWR to convene a task force, paid for by task force participants, to develop best management practices for the Commercial, Industrial and Institutional sector that achieve a 20% reduction in potable water use in the this sector by 2020.
- 7) Requires DWR, SWRCB and CALFED (or successor) to provide financial incentives to support water use efficiency and local water resources management measures.

Agricultural Water Conservation

- 1) Requires DWR to include in its update of the California Water Plan a strategy for use of agricultural water use efficiency management programs, including costs and benefits of the efficiency improvements in on-farm distribution systems.
- 2) Requires agricultural water suppliers to prepare and adopt agricultural water management plans.
- 3) States that agricultural water management plans shall not require water use efficiency measures that are not locally cost-effective and technically feasible.
- 4) Disqualifies from eligibility for state funding those agricultural water suppliers that do not complete water management plans.

COMMENTS

- 1) Rationale. In February 2008, the governor called on Californians to reduce per-capita water use by 20% by 2020. This bill proposes an approach to achieve the goal announced by the governor that would allow local water suppliers flexibility in complying with that goal.
- 2) Background.
  - a) Planning for Water Conservation. Existing law requires urban water suppliers to prepare water management plans and conditions state funding on implementation of certain urban water conservation measures. Obsolete statute used to require agricultural water suppliers to prepare agricultural water management plans. Federal law requires contractors of the federal Central Valley Project to prepare water conservation plans.

The California Water Plan is the state's plan for managing and developing water resources statewide. Since publishing the first water plan in 1957, DWR has prepared seven water plan updates. Existing law requires the water plan to be updated every five years.

- b) Governor Calls for Increased Water Conservation. In March of 2008, the governor called on all Californians to conserve water and to reduce their per capita consumption of water by 20% by 2020. This bill reflects the governor's statement, makes it a requirement for urban water suppliers, and requires implementation of BMPs for agricultural water suppliers and adoption of water agricultural water management plans.

- 3) Other Legislation.

- a) AB 49 (Feuer, 2009), similar to this bill, requires a 20% reduction in urban per-capita water use by the end of 2020 and requires agricultural water suppliers to implement best management practices by July 31, 2012. The bill passed the Assembly 43-30 and passed the Senate 21-13. The bill, along with several other bills concerning water, is now before a conference committee to reconcile differences between the versions of the bill passed by the Assembly and the Senate.
  - b) Proposition 84, approved by voters at the November 2006 statewide election, authorized the issuance of \$5.388 billion worth of state general obligation bonds to fund various resources-related projects and programs. Prop 84 earmarked \$1 billion in bond proceeds to be provided by DWR as grants to local agencies to meet the long-term water needs of the state, including the delivery of safe drinking water and the protection of water quality and the environment. Eligible projects must implement integrated regional water management plans that address the major water-related objectives and conflicts within the region. Projects must provide multiple benefits, including water supply reliability, water conservation and water use efficiency.
  - c) AB 2175 (Laird, 2008) was similar to this bill, in that it required urban water suppliers to reduce per-capita water use in their areas and established targets for agricultural water conservation. The bill passed this committee 12-5 and passed the Assembly 48-30 but, failed passage in the Senate.

Analysis Prepared by: Jay Dickenson / APPR. / (916) 319-2081

# **Preprint AB 2 (AB 49 content)**

## **Assemblymembers Feuer & Huffman**

### **Summary & Comments**

**SUMMARY:** Preprint AB 2 would require the state to achieve a 20% reduction in urban per capita water use in California by December 31, 2020, would require agricultural water management plans for agricultural water suppliers, and would promote expanded development of sustainable water supplies at the regional level.

Specifically, this proposal would:

#### **A. Urban Water Use.**

- 1) Establish a statewide urban water conservation target:
  - a) Require urban per capita water use to be reduced by 10 percent reduction by 2015.
  - b) Require urban per capita water use to be reduced by 20 percent by 2020
- 2) Establish process for urban water suppliers to meet the targets:
  - a) Define urban retail water supplier as a water supplier that directly provides municipal water to more than 3,000 end users or that supplies more than 3,000 acre-feet of water annually at retail for municipal purposes.
  - b) Require urban retail water suppliers, individually or on a regional basis, to develop an urban water use target by December 31, 2010.
  - c) Require each urban water supplier to meet their target by 2020, and to meet an interim target by 2015, defined as half of their 2020 target.
  - d) Provide three methodologies for urban water suppliers to choose from to develop their water use target.
    - (1) A 20% reduction in baseline daily per capita use, or
    - (2) A methodology that combines efficiency standards for residential indoor use (55 gpcd); residential outdoor use (Model Water Efficient Landscape Ordinance); and commercial, industrial, and institutional (CII) use (10 % reduction); or
    - (3) A 5% reduction in base daily per capita water use if the urban water supplier was an early member of the CUWCC and their base daily per capita water use is at or below the DWR regional targets for gpcd.
  - e) Require a minimum 5 % reduction in water base water use by 2020 for all urban water suppliers.
  - f) Allow recycled water to count towards meeting an urban suppliers water use target if the recycled water is used to offset potable water demands.
  - g) Require urban water suppliers to report in their urban water management plans due in 2010 the identified targets in 2010, and to report progress in meeting the targets every five years in subsequent updates of their urban water management plans.

- h) Allow urban suppliers to consider the following when determining compliance with their target:
    - i) Weather differences between the base year and current reporting year
    - ii) Substantial changes in commercial and industrial water use due to increase business output and economic development
    - iii) Substantial changes to institutional water use resulting from fire suppression or other extraordinary events
  - i) Require urban water suppliers to hold public hearings to allow for community input on the supplier's implementation plan for meeting their water use target, and requires the implementation to avoid placing a disproportionate burden on any customer sector.
  - j) Condition eligibility for water management grants and loans on an urban water supplier's compliance with meeting the requirements established by the proposal.
- 3) Require DWR review and reporting:
- a) Require DWR to review the 2015 urban water management plans and report to the Legislature by 2016 on progress in meeting the 20% statewide target.
  - b) The report could include recommendations on changes to the standards or targets in order to achieve the 20% reduction in per capita use.
- 4) Create a CII Task Force
- a) Require DWR to establish the task force by 2010 in conjunction with the California Urban Water Conservation Council.
  - b) Require the CII task force to do the following:
    - i) Develop best management practices (BMPs)
    - ii) Assess the potential for statewide water savings if the BMPs are implemented.
    - iii) Report to the Legislature by 2012 on proposed water use efficiency standards for CII users based on several considerations.

**B. Agricultural Water Management.**

- 1) Defines of Agricultural Water Supplier as a supplier that provides water to 10,000 or more of irrigated acres, excluding recycled water used for irrigation.
- 2) Require Agricultural Water Management Plans
  - a) Requires agricultural water suppliers to prepare and implement water management plans, with specified components, by 2012 and update the plans every five years.
  - b) Requires DWR to review the plans and report to the Legislature every five years on the status of the plans, and the effectiveness of the plans in promoting efficient agricultural water management practices.
- 3) Require Efficient Agricultural Water Management Practices
  - a) Require all agricultural water suppliers to implement 6 critical efficient water management practices (EWMPs). Ten additional EWMPs would be required only if they are locally cost effective and technically feasible:



- b) Establish the 6 critical EWMPs as:
    - i) Measure water deliveries to customers to a level of accuracy needed to implement a pricing structure that is based in part on the quantity of water delivered.
    - ii) Designate a water conservation coordinator
    - iii) Provide water management services to customers
    - iv) Adopt a pricing structure that is based at least in part on the quantity of water delivered to customers.
    - v) Identify potential for more flexible water deliveries and storage
    - vi) Evaluate and improve efficiency of the suppliers pumps
  - c) Allows DWR to update the efficient water management practices in consultation with the Agricultural Water Management Council, the board, and the U.S. Bureau of Reclamation, after public hearings.
  - d) Conditions eligibility for water management grants and loans on an agricultural water suppliers' compliance with meeting the requirements for implementation of efficient water management practices.
- 4) Establish Agricultural Water Reporting Requirements
- a) Require agricultural water suppliers to:
    - i) Report to DWR in 2012 and every five years thereafter, on what practices have been implemented, and an estimate of the water savings expected.
    - ii) Submit documentation to DWR supporting a determination that practice is not locally cost effective or technically feasible.
  - b) Require DWR to report to the Legislature on 2013, 2016, and 2021 on the status of implementing the efficient water management practices and the associate water savings.

**C. Establish Sustainable Water Management Provisions**

- 1) State legislative intent to promote implementation of regional water resource management practices through increased incentives/removal of barriers and specifies potential changes.
- 2) Require DWR, in consultation with SWRCB, to develop new statewide targets or review and update existing targets for regional water resource management practices including but not limited to:
  - i) Recycled water
  - ii) Brackish or ocean desalination
  - iii) Infiltration and direct use of urban stormwater runoff.

## *Comments*

This proposal includes four key components for promoting improvement in the statewide management of water resources – urban water conservation, CII (commercial, industrial, and institutional) water management, agricultural water management, and sustainable water management. Each of these components raises important issues for the committee.

### **A. Urban Water Conservation:**

- **Statewide target:** This proposal would establish a statewide target to reduce urban per capita water use by 20 percent by 2020. This target is consistent with the governor's proposal stated in his February 2008 letter to the Legislature. The Blue Ribbon Task Force's Strategic Plan recommended enactment of legislation requiring "Urban water purveyors to implement measures to achieve a 20 percent reduction in urban per capita water use statewide throughout California by December 31, 2020."

While most interest groups agree with the goal of improving efficient water use and water resources management, there is a dispute as to how best to do so. This proposal focuses on achieving the goal by greater water use efficiency – reducing demand. SB 261, which includes water use efficiency options, is focused more on improvements in water resources management – increasing regional supplies.

- **Urban water supplier targets.** This proposal would require urban retail water suppliers, individually or on a regional basis, to develop an urban water use target by December 31, 2010, would require each urban water supplier to meet their target by 2020, and to meet an interim target (half of their 2020 target) by 2015.

Flexibility or One size fits All. PAB 2 provides options in how water agencies can achieve higher levels of water conservation but requires those options to meet a per capita reduction in water use. The bill sets the "20 by 2020" target (and the interim 2015 target) for the entire state and then allows water agencies to choose one of three methods for determining their own water-use target for 2020. Water suppliers also can choose to join with a broader group of suppliers to meet the targets regionally. Finally the bill provides urban water suppliers with the option of shifting more water use to recycled water to meet their targets.

Nonetheless, many raise concerns about the urban water supplier targets in this proposal. Some argue that this proposal has a "one size fits all approach", and is too stringent. Conversely, others assert the proposal is too weak and ineffective in meeting the 20% statewide target.

### **B. Commercial Industrial and Institutional (CII) Water Management**

- This proposal would require an urban water supplier to meet a conservation target that could affect any urban sector of water use. The proposal would require urban water suppliers to avoid disproportionate impacts on any one sector and requires an open transparent process for all water customers to review and provide input into the water supplier implementation plan. One of the options for a supplier to develop a water use target includes a methodology for estimating reductions in each sector – which includes a 10% reduction in CII. This 10% reduction is part of the target development and does not dictate the method of implementing or meeting the target.

CII water users have raised concerns that the requirements of this proposal would adversely impact their production and could potentially force the companies to move out of state. In particular, some have suggested that “process” water may need to be treated differently than other CII water uses to avoid impacts on production. The Conference Committee may want to consider amendments that can increase protections for process water.

### C. Agricultural Water Management

- **Efficient water use.** This proposal relies on implementation of efficient water management practices (EWMPs) for water use, which have been developed, at least in part, by the Agricultural Water Management Council (AWMC). The bill creates two EWMP categories: “critical” that must agricultural water suppliers (e.g. water management services and pricing structures) must implement by all and “additional” EWMPs that must be implemented if the measures are locally cost effective and technically feasible. The mandatory EWMPs are the same 6 measures currently required of all federal water contractors (such as Westlands WD and Friant WA) since 1992 under the Central Valley Project Improvement Act (CVPIA).
- **Agricultural Water Management Plans:** This proposal reauthorizes dormant provisions of the Water Code provisions that required agricultural water suppliers to prepare agricultural water management plans. The intent appears to be to place agricultural water suppliers on an equal footing with urban suppliers who have been required to prepare and submit water management plans for approximately 15 years. The Legislature previously approved this concept in three bills by former Senator Kuehl (2005-07). The Governor vetoed all three, mostly due to costs of comprehensive reporting/planning requirements in those bills.

One key difference between this proposal, the dormant provisions of current law, and previous years’ bills is the definition of “agricultural water suppliers” – the agencies that would be required to comply with these provisions. This proposal defines agricultural water suppliers as those with 10,000 acres of irrigated land. The previous definition was a supplier providing more than 50,000 acre-feet of water for agricultural purposes. The definition for federal water contractors served by the Central Valley Project is 2,000 acres or acre-feet served.. Agricultural interests oppose the lower threshold of 2,000 stating that Bureau of Reclamation essentially does all the work for those smaller agencies. The definition of “urban water supplier” puts the threshold at 3000 connections or 3000 acre-feet of deliveries. Previous years’ bills provided for DWR to determine the appropriate threshold for imposing requirements.

### D. Sustainable Water Management

- One of the tensions among different interest groups is whether the water use efficiency program should include both demand reduction and increased water supplies and what type of mandates or incentives should be used to motivate compliance. This proposal begins to address those tensions by including Legislative intent language supporting incentives for sustainable water management and alternative water supplies such as brackish water desal and stormwater recovery. According to the author, the sponsors of both PAB 2 and SB 261 are continuing to discuss how to incorporate additional concepts and approaches related to water use efficiency and sustainable water management from SB 261 (Dutton & Ducheny) into PAB 2.

*The Assembly Water, Parks & Wildlife Committee and the Senate Natural Resources & Water Committee collaborated in preparing this analysis.*

**PREPRINT ASSEMBLY BILL No. 2**

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**Proposed by Assembly Members Feuer and Huffman**

August 4, 2009

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AB 2 2009

An act to amend and repeal Section 10631.5 of, to add Part 2.55 (commencing with Section 10608) to, and to repeal and add Part 2.8 (commencing with Section 10800) of, Division 6 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

Preprint AB 2, as proposed, Feuer. Water conservation: urban and agricultural water management planning.

(1) Existing law requires the Department of Water Resources to convene an independent technical panel to provide information to the department and the Legislature on new demand management measures, technologies, and approaches. "Demand management measures" means those water conservation measures, programs, and incentives that prevent the waste of water and promote the reasonable and efficient use and reuse of available supplies.

This bill would require the state to achieve a 20% reduction in urban per capita water use in California by December 31, 2020. The state would be required to make incremental progress towards this goal by reducing per capita water use by at least 10% on or before December 31, 2015. The bill would require each urban retail water supplier to develop urban water use targets and an interim urban water use target by December 31, 2010, in accordance with specified requirements. The bill would require agricultural water suppliers to implement efficient water management practices and would impose related reporting requirements on agricultural water suppliers. The bill would require the

department, in consultation with other state agencies, to develop a single standardized water use reporting form. The bill, with certain exceptions, would condition eligibility for certain water management grants or loans to urban water suppliers, beginning July 1, 2016, and agricultural water suppliers, beginning July 1, 2013, on the implementation of water conservation requirements established by the bill. The bill would repeal on July 1, 2016, an existing requirement that conditions eligibility for certain water management grants or loans to an urban water supplier on the implementation of certain water demand management measures.

(2) Existing law, until January 1, 1993, and thereafter only as specified, requires certain agricultural water suppliers to prepare and adopt water management plans.

This bill would substantially revise existing law relating to agricultural water management planning to require agricultural water suppliers to prepare and adopt agricultural water management plans with specified components on or before December 31, 2012, and update those plans on or before December 31, 2015, and on or before December 31 every 5 years thereafter. An agricultural water supplier that becomes an agricultural water supplier after December 31, 2012, would be required to prepare and adopt an agricultural water management plan within one year after becoming an agricultural water supplier. The agricultural water supplier would be required to notify each city or county within which the supplier provides water supplies with regard to the preparation or review of the plan. The bill would require the agricultural water supplier to submit copies of the plan to the department and other specified entities. The bill would provide that an agricultural water supplier is ineligible to receive specified state funds if the supplier does not prepare, adopt, and submit the plan in accordance with the requirements established by the bill.

(3) The provisions of the bill would only become operative if \_\_\_\_\_ of the 2009–10 Regular Session of the Legislature are enacted and become effective on or before January 1, 2010.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Part 2.55 (commencing with Section 10608) is  
2 added to Division 6 of the Water Code, to read:

1 PART 2.55. SUSTAINABLE WATER USE AND DEMAND  
2 REDUCTION

3  
4 CHAPTER 1. GENERAL DECLARATION AND POLICY  
5

6 10608. The Legislature finds and declares all of the following:

7 (a) Water is a public resource that the California Constitution  
8 protects against waste and unreasonable use.

9 (b) Growing population, climate change, and the need to protect  
10 and grow California's economy while protecting and restoring our  
11 fish and wildlife habitats make it essential that the state manage  
12 its water resources as efficiently as possible.

13 (c) Diverse regional water supply portfolios will increase water  
14 supply reliability and reduce dependence on the Delta.

15 (d) Reduced water use through conservation provides significant  
16 energy and environmental benefits, and can help protect water  
17 quality, improve streamflows, and reduce greenhouse gas  
18 emissions.

19 (e) The success of state and local water conservation programs  
20 to increase efficiency of water use is best determined on the basis  
21 of measurable outcomes related to water use or efficiency.

22 (f) Improvements in technology and management practices offer  
23 the potential for increasing water efficiency in California over  
24 time, providing an essential water management tool to meet the  
25 need for water for urban, agricultural, and environmental uses.

26 (g) The Governor has called for a 20 percent per capita reduction  
27 in urban water use statewide by 2020.

28 (h) The factors used to formulate water use efficiency targets  
29 can vary significantly from location to location based on factors  
30 including weather, patterns of urban and suburban development,  
31 and past efforts to enhance water use efficiency.

32 (i) Per capita water use is a valid measure of a water provider's  
33 efforts to reduce urban water use within its service area. However,  
34 per capita water use may be less useful for measuring relative  
35 water use efficiency between different water providers. Differences  
36 in weather, historical patterns of urban and suburban development,  
37 and density of housing in a particular location need to be  
38 considered when assessing per capita water use as a measure of  
39 efficiency.



10608.4. It is the intent of the Legislature, by the enactment of this part, to do all of the following:

(a) Require all water suppliers to increase the efficiency of use of this essential resource.

(b) Establish a framework to meet the state targets for urban water conservation identified in this part and called for by the Governor.

(c) Measure increased efficiency of urban water use on a per capita basis.

(d) Establish a method or methods for urban retail water suppliers to determine targets for achieving increased water use efficiency by the year 2020, in accordance with the Governor's goal of a 20-percent reduction.

(e) Establish consistent water use efficiency planning and implementation standards for urban water suppliers and agricultural water suppliers.

(f) Promote urban water conservation standards that are consistent with the California Urban Water Conservation Council's adopted best management practices and the requirements for demand management in Section 10631.

(g) Establish standards that recognize and provide credit to water suppliers that made substantial capital investments in urban water conservation since the drought of the early 1990s.

(h) Recognize and account for the investment of urban retail water suppliers in providing recycled water for beneficial uses.

(i) Require implementation of specified best management practices for agricultural water suppliers.

(j) Support the economic productivity of California's agricultural, commercial, and industrial sectors.

(k) Advance regional water resources management.

10608.8. (a) This part shall not limit or otherwise affect the application of Section 1011.

(b) This part does not limit or otherwise affect the application of Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) This part does not require a reduction in the total water used in the agricultural or urban sectors, because other factors such as changes in agricultural economics or population growth may have



1 greater effects on water use. This part does not limit the economic  
2 productivity of California’s agricultural, commercial, or industrial  
3 sectors.

4  
5 CHAPTER 2. DEFINITIONS  
6

7 10608.12. Unless the context otherwise requires, the following  
8 definitions govern the construction of this part:

9 (a) “Agricultural water supplier” means a water supplier, either  
10 publicly or privately owned, providing water to 10,000 or more  
11 irrigated acres, excluding recycled water. “Agricultural water  
12 supplier” includes a supplier or contractor for water, regardless of  
13 the basis of right, which distributes or sells water for ultimate resale  
14 to customers.

15 (b) “Base daily per capita water use” means:

16 (1) The urban retail water supplier’s estimate of its average  
17 gross daily water use per capita, reported in gallons per capita per  
18 day and calculated over a continuous 10-year period ending in  
19 2004 or later.

20 (2) For an urban retail water supplier that meets at least 10  
21 percent of its 2008 metered retail water demand through recycled  
22 water that is delivered within the service area of an urban retail  
23 water supplier or its urban wholesale water supplier, the urban  
24 retail water supplier may extend the calculation described in  
25 paragraph (1) up to an additional five years to a maximum of a  
26 continuous 15-year period ending in 2004 or later.

27 (3) For the purposes of paragraph (3) of subdivision (b) of  
28 Section 10608.20 and Section 10608.22, the urban retail water  
29 supplier’s estimate of its average gross daily water use per capita,  
30 reported in gallons per capita per day and calculated over a  
31 continuous five-year period ending in 2007 or later.

32 (c) “Baseline commercial, industrial, and institutional water  
33 use” means an urban retail water supplier’s base daily per capita  
34 water use for commercial, industrial, and institutional users.

35 (d) “Commercial water user” means a water user that provides  
36 or distributes a product or service.

37 (e) “Compliance daily per capita water use” means the gross  
38 daily water use per capita during the final year of the reporting  
39 period, reported in gallons per capita per day.

1 (f) “Disadvantaged community” means a community with an  
2 annual median household income that is less than 80 percent of  
3 the statewide annual median household income.

4 (g) “Gross water use” means the total volume of water, whether  
5 treated or untreated, entering the distribution system of an urban  
6 retail water supplier, excluding all of the following:

7 (1) Recycled water, as defined in subdivision (l), that is delivered  
8 within the service area of an urban retail water supplier or its urban  
9 wholesale water supplier.

10 (2) The net volume of water that the urban retail water supplier  
11 places into long-term storage.

12 (3) The volume of water the urban retail water supplier conveys  
13 for use by another urban water supplier.

14 (4) The volume of water delivered for agricultural use.

15 (h) “Industrial water user” means a water user that is primarily  
16 a manufacturer or processor of materials as defined by the Standard  
17 Industrial Classifications Code numbers 2000 to 3999, inclusive.

18 (i) “Institutional water user” means a water user dedicated to  
19 public service. This includes higher education institutions, schools,  
20 courts, churches, hospitals, and government facilities.

21 (j) “Interim urban water use target” means:

22 (1) Except as provided in paragraph (2), the midpoint between  
23 the urban retail water supplier’s base daily per capita water use  
24 and the urban retail water supplier’s urban water use target for  
25 2020.

26 (2) For the purposes of paragraph (2) of subdivision (b) of  
27 Section 10608.20, the sum of the following:

28 (A) For indoor residential and landscape uses, the midpoint as  
29 described in paragraph (1).

30 (B) For commercial, industrial, and institutional uses, a  
31 10-percent reduction from the baseline commercial, industrial, and  
32 institutional water use.

33 (k) “Locally cost effective” means that the present value of the  
34 local benefits of implementing an agricultural best management  
35 practice is greater than or equal to the present value of the local  
36 cost of implementing that measure.

37 (l) “Recycled water” means recycled water, as defined in  
38 subdivision (n) of Section 13050, that is used to offset potable  
39 demand, including recycled water supplies for indirect potable  
40 reuse, that meet the following requirements:

1 (1) For groundwater recharge, water supplies that are all of the  
2 following:

3 (A) Metered.

4 (B) Developed through planned investment.

5 (C) Treated to a minimum tertiary level.

6 (2) For spreading basins, water supplies that are all of the  
7 following:

8 (A) Delivered within the service area of an urban retail water  
9 supplier or its urban wholesale water supplier which helps an urban  
10 retail water supplier meet its urban water use target.

11 (B) Metered.

12 (C) Treated to a minimum tertiary level.

13 (3) For reservoir augmentation, water supplies that meet the  
14 criteria of paragraph (1) and are conveyed through a distribution  
15 system constructed specifically for recycled water.

16 (m) “Regional water resources management” means any of the  
17 following alternative sources of water:

18 (1) The capture of stormwater or rainwater.

19 (2) The use of recycled water.

20 (3) The desalination of brackish groundwater or seawater.

21 (4) The conjunctive use of surface water and groundwater in a  
22 manner that is consistent with the safe yield of the groundwater  
23 basin.

24 (n) “Reporting period” means the years for which an urban retail  
25 water supplier reports compliance with the urban water use targets.

26 (o) “Urban retail water supplier” means a water supplier, either  
27 publicly or privately owned, that directly provides municipal water  
28 to more than 3,000 end users or that supplies more than 3,000  
29 acre-feet of water annually at retail for municipal purposes.

30 (p) “Urban water use target” means the urban retail water  
31 supplier’s targeted future daily per capita water use.

32 (q) “Urban wholesale water supplier,” either publicly or  
33 privately owned, means a water supplier that provides more than  
34 3,000 acre-feet of water annually at wholesale for municipal  
35 purposes.

36 (r) “Water conservation” means the efficient management of  
37 water resources for beneficial uses, preventing waste, or  
38 accomplishing additional benefits with the same amount of water.

## CHAPTER 3. URBAN WATER SUPPLIERS

10608.16. (a) The state shall achieve a 20-percent reduction in urban per capita water use in California on or before December 31, 2020.

(b) The state shall make incremental progress towards the state target specified in subdivision (a) by reducing per capita water use by at least 10 percent on or before December 31, 2015.

10608.20. (a) (1) Each urban retail water supplier shall develop urban water use targets and an interim urban water use target by December 31, 2010. Urban retail water suppliers may elect to determine and report progress toward achieving these targets on an individual or regional basis, as provided in subdivision (a) of Section 10608.28, and may determine the targets on a fiscal year or calendar year basis.

(2) It is the intent of the Legislature that the urban water use targets described in subdivision (a) cumulatively result in a 20-percent reduction from the baseline daily per capita water use by 2020.

(b) An urban retail water supplier shall adopt one of the following methods for determining its urban water use target pursuant to subdivision (a):

(1) Eighty percent of the urban retail water supplier's baseline per capita daily water use.

(2) The per capita daily water use that is estimated using the sum of the following performance standards:

(A) For indoor residential water use, 55 gallons per capita daily water use as a provisional target. Upon completion of the department's 2016 report to the Legislature pursuant to Section 10608.42, this target may be adjusted.

(B) For landscape irrigated through dedicated or residential meters, water efficiency equivalent to the standards of the Model Water Efficient Landscape Ordinance set forth in Chapter 2.7 (commencing with Section 490) of Division 2 of Title 23 of the California Code of Regulations, as in effect the later of the year of the landscape's installation or 1992. An urban retail water supplier using this approach shall use satellite imagery, site visits, or other best available technology to develop an accurate estimate of landscaped areas.

1 (C) For commercial, industrial, and institutional uses, a  
2 10-percent reduction in water use from the baseline commercial,  
3 industrial, and institutional water use by 2020.

4 (3) For urban water suppliers that were members of the  
5 California Urban Water Conservation Council prior to 1994, and  
6 whose base daily per capita water use is at or below the applicable  
7 state hydrologic region target, as set forth in the state's draft  
8 20x2020 Water Conservation Plan (dated April 30, 2009), 95  
9 percent of base daily per capita water use. If the service area of an  
10 urban water supplier includes more than one hydrologic region,  
11 the supplier shall apportion its service area to each region based  
12 on population or area. An urban retail water supplier may adopt  
13 the criteria in this paragraph for determining its urban water use  
14 target only if its base daily per capita water use is at or below the  
15 hydrologic region target for each region within its service area.

16 (c) An urban retail water supplier shall include in its urban water  
17 management plan required pursuant to Part 2.6 (commencing with  
18 Section 10610) due in 2010 the baseline daily per capita water use,  
19 urban water use target, interim urban water use target, and  
20 compliance daily per capita water use, along with the bases for  
21 determining those estimates, including references to supporting  
22 data.

23 (d) When calculating per capita values for the purposes of this  
24 chapter, an urban retail water supplier shall determine population  
25 using federal, state, and local population reports and projections.

26 (e) An urban retail water supplier may update its 2020 urban  
27 water use target in its 2015 urban water management plan required  
28 pursuant to Part 2.6 (commencing with Section 10610).

29 10608.22. Notwithstanding the method adopted by an urban  
30 retail water supplier pursuant to Section 10608.20, an urban retail  
31 water supplier's per capita daily water use reduction shall be no  
32 less than 5 percent of base daily per capita water use as defined in  
33 paragraph (3) of subdivision (b) of Section 10608.12.

34 10608.24. (a) Each urban retail water supplier shall meet its  
35 interim urban water use target by December 31, 2015.

36 (b) Each urban retail water supplier shall meet its urban water  
37 use target by December 31, 2020.

38 (c) An urban retail water supplier's compliance daily per capita  
39 water use shall be the measure of progress toward achievement of  
40 its urban water use target.

(d) (1) When determining compliance daily per capita water use, an urban retail water supplier may consider the following factors:

(A) Differences in evapotranspiration and rainfall in the baseline period compared to the compliance reporting period.

(B) Substantial changes to commercial or industrial water use resulting from increased business output and economic development that have occurred during the reporting period.

(C) Substantial changes to institutional water use resulting from fire suppression services or other extraordinary events that have occurred during the reporting period.

(2) If the urban retail water supplier elects to adjust its estimate of compliance daily per capita water use due to one or more of the factors described in paragraph (1), it shall provide the basis for, and data supporting, the adjustment in the report required by Section 10608.40.

10608.26. (a) In complying with this part, an urban retail water supplier shall conduct at least one public hearing to accomplish all of the following:

(1) Allow community input regarding the urban retail water supplier's implementation plan for complying with this part.

(2) Consider the economic impacts of the urban retail water supplier's implementation plan for complying with this part.

(3) Adopt a method, pursuant to subdivision (b) of Section 10608.20, for determining its urban water use target.

(b) In complying with this part, an urban retail water supplier shall avoid placing a disproportionate burden on any customer sector.

10608.28. (a) An urban retail water supplier may meet its urban water use target within its retail service area, or by any of the following:

(1) Through an urban wholesale water supplier.

(2) Through a regional agency authorized to plan and implement water conservation, including, but not limited to, an agency established under the Bay Area Water Supply and Conservation Agency Act (Division 31 (commencing with Section 81300)).

(3) Through a regional water management group.

(4) By an integrated regional water management funding area.

(5) By hydrologic region.



1 (6) Through other appropriate geographic scales for which  
2 computation methods have been developed by the department.

3 (b) An urban retail water supplier may meet its urban water use  
4 target entirely through efficiency gains in its residential water use  
5 sector, entirely through efficiency gains in its landscape water use  
6 sector, entirely through efficiency gains in its commercial,  
7 institutional, and industrial sector, or through any combination  
8 among these sectors.

9 10608.32. All costs incurred pursuant to this part by a water  
10 utility regulated by the Public Utilities Commission may be  
11 recoverable in rates subject to review and approval by the Public  
12 Utilities Commission, and may be recorded in a memorandum  
13 account and reviewed for reasonableness by staff of the Public  
14 Utilities Commission.

15 10608.36. Urban wholesale water suppliers shall include in  
16 the urban water management plans required pursuant to Part 2.6  
17 (commencing with Section 10610) an assessment of their present  
18 and proposed future measures, programs, and policies to help  
19 achieve the water use reductions required by this part.

20 10608.40. Urban water retail suppliers shall report to the  
21 department on their progress in meeting their urban water use  
22 targets as part of their urban water management plans submitted  
23 pursuant to Section 10631.

24 10608.42. The department shall review the 2015 urban water  
25 management plans and report to the Legislature by December 31,  
26 2016, on progress towards achieving a 20-percent reduction in  
27 urban water use by 2020. The report may include recommendations  
28 on changes to water efficiency standards or urban water use targets  
29 in order to achieve the 20-percent reduction and to reflect updated  
30 efficiency information and technology changes.

31 10608.43. The department shall, in conjunction with the  
32 California Urban Water Conservation Council, by April 1, 2010,  
33 convene a task force consisting of experts to develop alternative  
34 best management practices for commercial, industrial, and  
35 institutional users and an assessment of the potential statewide  
36 reduction in water use in the commercial, industrial, and  
37 institutional sectors that would result from implementation of these  
38 best management practices. The task force shall submit a report  
39 to the Legislature by April 1, 2012, that shall include a review of  
40 multiple sectors within commercial, industrial, and institutional



1 users and that shall establish water use efficiency standards for  
2 commercial, industrial, and institutional users among various  
3 sectors of water use, those sectors shall be based on consideration  
4 of, but not limited to, the following:

5 (a) Appropriate metrics for evaluating commercial, industrial,  
6 and institutional water use.

7 (b) Evaluation of water demands for manufacturing processes,  
8 goods, and cooling.

9 (c) Evaluation of public infrastructure necessary for delivery of  
10 recycled water to the commercial, industrial, and institutional  
11 sectors.

12 (d) Evaluation of institutional and economic barriers to increased  
13 recycled water use within the commercial, industrial, and  
14 institutional sectors.

15 (e) Identification of technically feasible best management  
16 practices to achieve more efficient water use statewide in the  
17 commercial, industrial, and institutional sectors that is consistent  
18 with the public interest and reflects past investments in water use  
19 efficiency.

20 10608.44. State agencies shall reduce water use on facilities  
21 they own or operate to support urban retail water suppliers in  
22 meeting the target identified in Section 10608.16.

#### 23 24 CHAPTER 4. AGRICULTURAL WATER SUPPLIERS 25

26 10608.48. (a) On or before July 31, 2012, an agricultural water  
27 supplier shall implement efficient water management practices  
28 pursuant to subdivisions (b) and (c).

29 (b) Agricultural water suppliers shall implement all of the  
30 following critical efficient management practices:

31 (1) Measure the volume of water delivered to customers with  
32 sufficient accuracy to comply with subdivision (a) of Section  
33 531.10 and to implement volumetric pricing pursuant to paragraph  
34 (4).

35 (2) Designate a water conservation coordinator who will develop  
36 and implement the water management plan and prepare progress  
37 reports.

38 (3) Provide for the availability of water management services  
39 to water users. These services may include, but are not limited to,  
40 all of the following:

- 1 (A) On-farm irrigation and drainage system evaluations.
- 2 (B) Normal year and real-time irrigation scheduling and crop
- 3 evapotranspiration information.
- 4 (C) Surface water, groundwater, and drainage water quantity
- 5 and quality data.
- 6 (D) Agricultural water management educational programs and
- 7 materials for farmers, staff, and the public.
- 8 (4) Adopt a pricing structure for water customers based at least
- 9 in part on quantity delivered.
- 10 (5) Evaluate the policies of agencies that provide the supplier
- 11 with water to identify the potential for institutional changes to
- 12 allow more flexible water deliveries and storage.
- 13 (6) Evaluate and improve the efficiencies of the supplier's
- 14 pumps.
- 15 (c) Agricultural water suppliers shall implement additional
- 16 efficient management practices, including, but not limited to,
- 17 practices to accomplish all of the following, if the measures are
- 18 locally cost effective and technically feasible:
- 19 (1) Facilitate alternative land use for lands with exceptionally
- 20 high water duties or whose irrigation contributes to significant
- 21 problems, including drainage.
- 22 (2) Facilitate use of available recycled water that otherwise
- 23 would not be used beneficially, meets all health and safety criteria,
- 24 and does not harm crops or soils.
- 25 (3) Facilitate the financing of capital improvements for on-farm
- 26 irrigation systems.
- 27 (4) Implement an incentive pricing structure that promotes one
- 28 or more of the following goals:
- 29 (A) More efficient water use at the farm level.
- 30 (B) Conjunctive use of groundwater.
- 31 (C) Appropriate increase of groundwater recharge.
- 32 (D) Reduction in problem drainage.
- 33 (E) Improved management of environmental resources.
- 34 (F) Effective management of all water sources throughout the
- 35 year by adjusting seasonal pricing structures based on current
- 36 conditions.
- 37 (5) Expand line or pipe distribution systems, and construct
- 38 regulatory reservoirs to increase distribution system flexibility and
- 39 capacity, decrease maintenance, and reduce seepage.

1 (6) Increase flexibility in water ordering by, and delivery to,  
2 water customers within operational limits.

3 (7) Construct and operate supplier spill and tailwater recovery  
4 systems.

5 (8) Increase planned conjunctive use of surface and groundwater  
6 within the supplier service area.

7 (9) Automate canal control structures.

8 (10) Facilitate or promote customer pump testing and evaluation.

9 (d) Agricultural water suppliers shall report to the department  
10 on which efficient water management practices have been  
11 implemented and are planned to be implemented, an estimate of  
12 the water savings that have occurred since the last report, and an  
13 estimate of the water savings estimated to occur five and 10 years  
14 in the future. If an agricultural water supplier determines that a  
15 efficient water management practice is not locally cost effective  
16 or technically feasible, the supplier shall submit information  
17 documenting that determination.

18 (e) The reports shall be submitted to the department on or before  
19 December 31, 2012, and thereafter in years ending in zero and  
20 years ending in five.

21 (f) Agricultural water supplier reporting requirements may be  
22 met through the submission to the department of an agricultural  
23 water management plan required pursuant to Section 10820, or  
24 developed for the United States Bureau of Reclamation that is  
25 consistent with this part.

26 (g) The reports shall be submitted using a standardized form  
27 developed pursuant to Section 10608.52.

28 (h) On or before December 31, 2013, December 31, 2016, and  
29 December 31, 2021, the department, in consultation with the state  
30 board, shall submit to the Legislature a report on the agricultural  
31 efficient water management practices that have been implemented  
32 and are planned to be implemented and an assessment of the  
33 manner in which the implementation of those efficient water  
34 management practices has affected and will affect agricultural  
35 operations, including estimated water savings, if any.

36 (i) The department may update the best management practices  
37 required pursuant to subdivisions (b) and (c), in consultation with  
38 the Agricultural Water Management Council, the United States  
39 Bureau of Reclamation, and the state board. All best management  
40 practices for agricultural water use pursuant to this chapter shall

1 be adopted or revised by the department only after the department  
2 conducts public hearings to allow participation of the diverse  
3 geographical areas and interests of the state.

4  
5 CHAPTER 5. SUSTAINABLE WATER MANAGEMENT  
6

7 10608.50. (a) It is the intent of the Legislature by enactment  
8 of this part to promote implementation of regional water resource  
9 management practices through increased incentives and removal  
10 of barriers. Potential changes may include, but are not limited to,  
11 all of the following:

12 (1) Revisions to the requirements for urban and agricultural  
13 water management plans.

14 (2) Revisions to the requirements for integrated regional water  
15 management plans.

16 (3) Revisions to the eligibility for state water management grants  
17 and loans.

18 (4) Revisions to state or local permitting requirements.

19 (5) Increased funding for research, feasibility studies, and project  
20 construction.

21 (6) Expanding technical and educational support for local land  
22 use and water management agencies.

23 (b) No later than January 1, 2011, and updated as part of the  
24 California Water Plan pursuant to Section \_\_\_\_\_, the department,  
25 in consultation with the board, and with public input, shall develop  
26 new statewide targets, or review and update existing statewide  
27 targets, for regional water resources management practices  
28 including, but not limited to, recycled water, brackish and seawater  
29 desalination, and infiltration and direct use of urban stormwater  
30 runoff.

31  
32 CHAPTER 5.5. STANDARDIZED DATA COLLECTION  
33

34 10608.52. (a) The department, in consultation with the board,  
35 the California Bay-Delta Authority, the State Department of Public  
36 Health, and the Public Utilities Commission, shall develop a single  
37 standardized water use reporting form to meet the water use  
38 information needs of each agency, including the needs of urban  
39 water suppliers that elect to determine and report progress toward

1 achieving targets on a regional basis as provided in subdivision  
2 (a) of Section 10608.28.

3 (b) At a minimum, the form shall be developed to accommodate  
4 information sufficient to assess an urban water supplier's  
5 compliance with conservation targets pursuant to Section 10608.24  
6 and an agricultural water supplier's compliance with  
7 implementation of best management practices pursuant to  
8 subdivision (a) of Section 10608.48. The form shall accommodate  
9 reporting by water suppliers on an individual or regional basis as  
10 provided in subdivision (a) of Section 10608.28.

11  
12 CHAPTER 6. FUNDING PROVISIONS  
13

14 10608.56. (a) Beginning July 1, 2016, the terms of, and  
15 eligibility for, a water management grant or loan made to urban  
16 retail water suppliers and awarded or administered by the  
17 department, board, or California Bay-Delta Authority or its  
18 successor agency shall be conditioned on the implementation of  
19 Chapter 3 (commencing with Section 10608.16).

20 (b) Beginning July 1, 2013, the terms of, and eligibility for, a  
21 water management grant or loan made to agricultural water  
22 suppliers and awarded or administered by the department, board,  
23 or California Bay-Delta Authority or its successor agency shall be  
24 conditioned on the implementation of Chapter 4 (commencing  
25 with Section 10608.48).

26 (c) Notwithstanding subdivision (a), the department shall  
27 determine that an urban retail water supplier is eligible for a water  
28 management grant or loan even though the supplier has not met  
29 the per capita reductions required pursuant to Section 10608.24,  
30 if the urban retail water supplier has submitted to the department  
31 for approval a schedule, financing plan, and budget, to be included  
32 in the grant or loan agreement, for achieving the per capita  
33 reductions. The supplier may request grant or loan funds to achieve  
34 the per capita reductions to the extent the request is consistent with  
35 the eligibility requirements applicable to the water management  
36 funds.

37 (d) Notwithstanding subdivision (b), the department shall  
38 determine that an agricultural water supplier is eligible for a water  
39 management grant or loan even though the supplier is not  
40 implementing all of the best management practices described in

1 Section 10608.48, if the agricultural water supplier has submitted  
2 to the department for approval a schedule, financing plan, and  
3 budget, to be included in the grant or loan agreement, for  
4 implementation of the best management practices. The supplier  
5 may request grant or loan funds to implement the best management  
6 practices to the extent the request is consistent with the eligibility  
7 requirements applicable to the water management funds.

8 (e) Notwithstanding subdivision (a), the department shall  
9 determine that an urban retail water supplier is eligible for a water  
10 management grant or loan even though the supplier has not met  
11 the per capita reductions required pursuant to Section 10608.24,  
12 if the urban retail water supplier has submitted to the department  
13 for approval documentation demonstrating that their entire service  
14 area qualifies as a disadvantaged community.

15 10608.60. (a) It is the intent of the Legislature that funds made  
16 available by Section 75026 of the Public Resources Code should  
17 be expended, consistent with Division 43 (commencing with  
18 Section 75001) of the Public Resources Code and upon  
19 appropriation by the Legislature, for grants to implement this part.  
20 In the allocation of funding, it is the intent of the Legislature that  
21 the department give consideration to disadvantaged communities  
22 to assist in implementing the requirements of this part.

23 (b) It is the intent of the Legislature that funds made available  
24 by Section 75041 of the Public Resources Code should be expended  
25 consistent with Division 43 (commencing with Section 75001) of  
26 the Public Resources Code and, upon appropriation by the  
27 Legislature, for direct expenditures to implement this part.

28  
29 CHAPTER 7. QUANTIFYING AGRICULTURAL WATER USE  
30 EFFICIENCY  
31

32 10608.64. The department, in consultation with the Agricultural  
33 Water Management Council, academic experts, and other  
34 stakeholders, shall develop a methodology for quantifying the  
35 efficiency of agricultural water use. Alternatives to be assessed  
36 shall include, but not be limited to, determination of efficiency  
37 levels based on crop type or irrigation system distribution  
38 uniformity. On or before December 31, 2011, the department shall  
39 report to the Legislature on a proposed methodology and a plan  
40 for implementation. The plan shall include the estimated



1 implementation costs and the types of data needed to support the  
2 methodology.

3 SEC. 2. Section 10631.5 of the Water Code is amended to read:

4 10631.5. (a) (1) Beginning January 1, 2009, the terms of, and  
5 eligibility for, a water management grant or loan made to an urban  
6 water supplier and awarded or administered by the department,  
7 state board, or California Bay-Delta Authority or its successor  
8 agency shall be conditioned on the implementation of the water  
9 demand management measures described in Section 10631, as  
10 determined by the department pursuant to subdivision (b).

11 (2) For the purposes of this section, water management grants  
12 and loans include funding for programs and projects for surface  
13 water or groundwater storage, recycling, desalination, water  
14 conservation, water supply reliability, and water supply  
15 augmentation. This section does not apply to water management  
16 projects funded by the *federal* American Recovery and  
17 Reinvestment Act of 2009 (Public Law 111-5).

18 (3) Notwithstanding paragraph (1), the department shall  
19 determine that an urban water supplier is eligible for a water  
20 management grant or loan even though the supplier is not  
21 implementing all of the water demand management measures  
22 described in Section 10631, if the urban water supplier has  
23 submitted to the department for approval a schedule, financing  
24 plan, and budget, to be included in the grant or loan agreement,  
25 for implementation of the water demand management measures.  
26 The supplier may request grant or loan funds to implement the  
27 water demand management measures to the extent the request is  
28 consistent with the eligibility requirements applicable to the water  
29 management funds.

30 (4) (A) Notwithstanding paragraph (1), the department shall  
31 determine that an urban water supplier is eligible for a water  
32 management grant or loan even though the supplier is not  
33 implementing all of the water demand management measures  
34 described in Section 10631, if an urban water supplier submits to  
35 the department for approval documentation demonstrating that a  
36 water demand management measure is not locally cost effective.  
37 If the department determines that the documentation submitted by  
38 the urban water supplier fails to demonstrate that a water demand  
39 management measure is not locally cost effective, the department  
40 shall notify the urban water supplier and the agency administering



1 the grant or loan program within 120 days that the documentation  
2 does not satisfy the requirements for an exemption, and include  
3 in that notification a detailed statement to support the  
4 determination.

5 (B) For purposes of this paragraph, “not locally cost effective”  
6 means that the present value of the local benefits of implementing  
7 a water demand management measure is less than the present value  
8 of the local costs of implementing that measure.

9 (b) (1) The department, in consultation with the state board and  
10 the California Bay-Delta Authority or its successor agency, and  
11 after soliciting public comment regarding eligibility requirements,  
12 shall develop eligibility requirements to implement the requirement  
13 of paragraph (1) of subdivision (a). In establishing these eligibility  
14 requirements, the department shall do both of the following:

15 (A) Consider the conservation measures described in the  
16 Memorandum of Understanding Regarding Urban Water  
17 Conservation in California, and alternative conservation approaches  
18 that provide equal or greater water savings.

19 (B) Recognize the different legal, technical, fiscal, and practical  
20 roles and responsibilities of wholesale water suppliers and retail  
21 water suppliers.

22 (2) (A) For the purposes of this section, the department shall  
23 determine whether an urban water supplier is implementing all of  
24 the water demand management measures described in Section  
25 10631 based on either, or a combination, of the following:

26 (i) Compliance on an individual basis.

27 (ii) Compliance on a regional basis. Regional compliance shall  
28 require participation in a regional conservation program consisting  
29 of two or more urban water suppliers that achieves the level of  
30 conservation or water efficiency savings equivalent to the amount  
31 of conservation or savings achieved if each of the participating  
32 urban water suppliers implemented the water demand management  
33 measures. The urban water supplier administering the regional  
34 program shall provide participating urban water suppliers and the  
35 department with data to demonstrate that the regional program is  
36 consistent with this clause. The department shall review the data  
37 to determine whether the urban water suppliers in the regional  
38 program are meeting the eligibility requirements.

39 (B) The department may require additional information for any  
40 determination pursuant to this section.

(3) The department shall not deny eligibility to an urban water supplier in compliance with the requirements of this section that is participating in a multiagency water project, or an integrated regional water management plan, developed pursuant to Section 75026 of the Public Resources Code, solely on the basis that one or more of the agencies participating in the project or plan is not implementing all of the water demand management measures described in Section 10631.

(c) In establishing guidelines pursuant to the specific funding authorization for any water management grant or loan program subject to this section, the agency administering the grant or loan program shall include in the guidelines the eligibility requirements developed by the department pursuant to subdivision (b).

(d) Upon receipt of a water management grant or loan application by an agency administering a grant and loan program subject to this section, the agency shall request an eligibility determination from the department with respect to the requirements of this section. The department shall respond to the request within 60 days of the request.

(e) The urban water supplier may submit to the department copies of its annual reports and other relevant documents to assist the department in determining whether the urban water supplier is implementing or scheduling the implementation of water demand management activities. In addition, for urban water suppliers that are signatories to the Memorandum of Understanding Regarding Urban Water Conservation in California and submit biennial reports to the California Urban Water Conservation Council in accordance with the memorandum, the department may use these reports to assist in tracking the implementation of water demand management measures.

*(f) This section shall remain in effect only until July 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2016, deletes or extends that date.*

SEC. 3. Part 2.8 (commencing with Section 10800) of Division 6 of the Water Code is repealed.

SEC. 4. Part 2.8 (commencing with Section 10800) is added to Division 6 of the Water Code, to read:

PART 2.8. AGRICULTURAL WATER MANAGEMENT  
PLANNING

CHAPTER 1. GENERAL DECLARATIONS AND POLICY

10800. This part shall be known and may be cited as the Agricultural Water Management Planning Act.

10801. The Legislature finds and declares all of the following:

(a) The waters of the state are a limited and renewable resource.

(b) The California Constitution requires that water in the state be used in a reasonable and beneficial manner.

(c) Urban water districts are required to adopt water management plans.

(d) The conservation of agricultural water supplies is of great statewide concern.

(e) There is a great amount of reuse of delivered water, both inside and outside the water service areas.

(f) Significant noncrop beneficial uses are associated with agricultural water use, including streamflows and wildlife habitat.

(g) Significant opportunities exist in some areas, through improved irrigation water management, to conserve water or to reduce the quantity of highly saline or toxic drainage water.

(h) Changes in water management practices should be carefully planned and implemented to minimize adverse effects on other beneficial uses currently being served.

(i) Agricultural water suppliers that receive water from the Central Valley Project are required by federal law to prepare and implement water conservation plans.

(j) Agricultural water users applying for a permit to appropriate water from the board are required to prepare and implement water conservation plans.

10802. The Legislature finds and declares that all of the following are the policies of the state:

(a) The conservation of water shall be pursued actively to protect both the people of the state and the state's water resources.

(b) The conservation of agricultural water supplies shall be an important criterion in public decisions with regard to water.

(c) Agricultural water suppliers shall be required to prepare water management plans to achieve conservation of water.

## CHAPTER 2. DEFINITIONS

10810. Unless the context otherwise requires, the definitions set forth in this chapter govern the construction of this part.

10811. “Agricultural water management plan” or “plan” means an agricultural water management plan prepared pursuant to this part.

10812. “Agricultural water supplier” has the same meaning as defined in Section 10608.12.

10813. “Customer” means a purchaser of water from a water supplier who uses water for agricultural purposes.

10814. “Person” means any individual, firm, association, organization, partnership, business, trust, corporation, company, public agency, or any agency of that entity.

10815. “Public agency” means any city, county, city and county, special district, or other public entity.

10816. “Urban water supplier” has the same meaning as set forth in Section 10617.

10817. “Water conservation” means the efficient management of water resources for beneficial uses, preventing waste, or accomplishing additional benefits with the same amount of water.

## CHAPTER 3. AGRICULTURAL WATER MANAGEMENT PLANS

## Article 1. General Provisions

10820. (a) An agricultural water supplier shall prepare and adopt an agricultural water management plan in the manner set forth in this chapter on or before December 31, 2012, and shall update that plan on December 31, 2015, and on or before December 31 every five years thereafter.

(b) Every supplier that becomes an agricultural water supplier after December 31, 2012, shall prepare and adopt an agricultural water management plan within one year after the date it has become an agricultural water supplier.

(c) A water supplier that indirectly provides water to customers for agricultural purposes shall not prepare a plan pursuant to this part without the consent of each agricultural water supplier that directly provides that water to its customers.

10821. (a) An agricultural water supplier required to prepare a plan pursuant to this part shall notify each city or county within which the supplier provides water supplies that the agricultural water supplier will be preparing the plan or reviewing the plan and considering amendments or changes to the plan. The agricultural water supplier may consult with, and obtain comments from, each city or county that receives notice pursuant to this subdivision.

(b) The amendments to, or changes in, the plan shall be adopted and submitted in the manner set forth in Article 3 (commencing with Section 10840).

## Article 2. Contents of Plans

10825. (a) It is the intent of the Legislature in enacting this part to allow levels of water management planning commensurate with the numbers of customers served and the volume of water supplied.

(b) This part does not require the implementation of water conservation programs or practices that are not locally cost effective.

10826. An agricultural water management plan shall be adopted in accordance with this chapter. The plan shall do all of the following:

(a) Describe the agricultural water supplier and the service area, including all of the following:

- (1) Size of the service area.
- (2) Location of the service area and its water management facilities.
- (3) Terrain and soils.
- (4) Climate.
- (5) Operating rules and regulations.
- (6) Water delivery measurements or calculations.
- (7) Water rate schedules and billing.
- (8) Water shortage allocation policies.

(b) Describe the quantity and quality of water resources of the agricultural water supplier, including all of the following:

- (1) Surface water supply.
- (2) Groundwater supply.
- (3) Other water supplies.
- (4) Source water quality monitoring practices.

- 1 (5) Water uses within the agricultural water supplier's service  
2 area, including all of the following:
- 3 (A) Agricultural.
  - 4 (B) Environmental.
  - 5 (C) Recreational.
  - 6 (D) Municipal and industrial.
  - 7 (E) Groundwater recharge.
  - 8 (F) Transfers and exchanges.
  - 9 (G) Other water uses.
- 10 (6) Drainage from the water supplier's service area.
- 11 (7) Water accounting, including all of the following:
- 12 (A) Quantifying the water supplier's water supplies.
  - 13 (B) Tabulating water uses.
  - 14 (C) Overall water budget.
- 15 (8) Water supply reliability.
- 16 (c) Include an analysis, based on available information, of the  
17 effect of climate change on future water supplies.
- 18 (d) Describe previous water management activities.
- 19 (e) Include in the plan the water use efficiency information  
20 required pursuant to Section 10608.48.
- 21 10827. Agricultural water suppliers that are members of the  
22 Agricultural Water Management Council, and that submit water  
23 management plans to that council in accordance with the  
24 "Memorandum of Understanding Regarding Efficient Water  
25 Management Practices By Agricultural Water Suppliers In  
26 California," dated January 1, 1999, may submit the water  
27 management plans identifying water demand management  
28 measures currently being implemented, or scheduled for  
29 implementation, to satisfy the requirements of Section 10826.
- 30 10828. (a) Agricultural water suppliers that are required to  
31 submit water conservation plans to the United States Bureau of  
32 Reclamation pursuant to either the Central Valley Project  
33 Improvement Act (Public Law 102-575) or the Reclamation  
34 Reform Act of 1982, or both, may submit those water conservation  
35 plans to satisfy the requirements of Section 10826, if both of the  
36 following apply:
- 37 (1) The agricultural water supplier has adopted and submitted  
38 the water conservation plan to the United States Bureau of  
39 Reclamation within the previous four years.

1 (2) The United States Bureau of Reclamation has accepted the  
2 water conservation plan as adequate.

3 (b) This part does not require agricultural water suppliers that  
4 are required to submit water conservation plans to the United States  
5 Bureau of Reclamation pursuant to either the Central Valley Project  
6 Improvement Act (Public Law 102-575) or the Reclamation  
7 Reform Act of 1982, or both, to prepare and adopt water  
8 conservation plans according to a schedule that is different from  
9 that required by the United States Bureau of Reclamation.

10 10829. An agricultural water supplier may satisfy the  
11 requirements of this part by adopting an urban water management  
12 plan pursuant to Part 2.6 (commencing with Section 10610) or by  
13 participation in areawide, regional, watershed, or basinwide water  
14 management planning if those plans meet or exceed the  
15 requirements of this part.

16  
17 Article 3. Adoption and Implementation of Plans  
18

19 10840. Every agricultural water supplier shall prepare its plan  
20 pursuant to Article 2 (commencing with Section 10825).

21 10841. Prior to adopting a plan, the agricultural water supplier  
22 shall make the proposed plan available for public inspection, and  
23 shall hold a public hearing on the plan. Prior to the hearing, notice  
24 of the time and place of hearing shall be published within the  
25 jurisdiction of the publicly owned agricultural water supplier  
26 pursuant to Section 6066 of the Government Code. A privately  
27 owned agricultural water supplier shall provide an equivalent notice  
28 within its service area. After the hearing, the plan shall be adopted  
29 as prepared or as modified during or after the hearing.

30 10842. An agricultural water supplier shall implement the plan  
31 adopted pursuant to this chapter in accordance with the schedule  
32 set forth in its plan, as determined by the governing body of the  
33 agricultural water supplier.

34 10843. (a) An agricultural water supplier shall submit to the  
35 entities identified in subdivision (b) a copy of its plan no later than  
36 30 days after the adoption of the plan. Copies of amendments or  
37 changes to the plans shall be submitted to the entities identified in  
38 subdivision (b) within 30 days after the adoption of the  
39 amendments or changes.



(b) An agricultural water supplier shall submit a copy of its plan and amendments or changes to the plan to each of the following entities:

(1) The department.

(2) Any city, county, or city and county within which the agricultural water supplier provides water supplies.

(3) Any groundwater management entity within which jurisdiction the agricultural water supplier extracts or provides water supplies.

(4) Any urban water supplier within which jurisdiction the agricultural water supplier provides water supplies.

(5) Any city or county library within which jurisdiction the agricultural water supplier provides water supplies.

(6) The California State Library.

(7) Any local agency formation commission serving a county within which the agricultural water supplier provides water supplies.

10844. (a) Not later than 30 days after the date of adopting its plan, the agricultural water supplier shall make the plan available for public review on the agricultural water supplier's Internet Web site.

(b) An agricultural water supplier that does not have an Internet Web site shall submit to the department, not later than 30 days after the date of adopting its plan, a copy of the adopted plan in an electronic format. The department shall make the plan available for public review on the department's Internet Web site.

10845. (a) The department shall prepare and submit to the Legislature, on or before December 31, 2013, and thereafter in the years ending in six and years ending in one, a report summarizing the status of the plans adopted pursuant to this part.

(b) The report prepared by the department shall identify the outstanding elements of any plan adopted pursuant to this part. The report shall include an evaluation of the effectiveness of this part in promoting efficient agricultural water management practices and recommendations relating to proposed changes to this part, as appropriate.

(c) The department shall provide a copy of the report to each agricultural water supplier that has submitted its plan to the department. The department shall also prepare reports and provide

1 data for any legislative hearing designed to consider the  
2 effectiveness of plans submitted pursuant to this part.

3 (d) This section does not authorize the department, in preparing  
4 the report, to approve, disapprove, or critique individual plans  
5 submitted pursuant to this part.

6  
7 CHAPTER 4. MISCELLANEOUS PROVISIONS  
8

9 10850. (a) Any action or proceeding to attack, review, set  
10 aside, void, or annul the acts or decisions of an agricultural water  
11 supplier on the grounds of noncompliance with this part shall be  
12 brought pursuant to Section 1085 of the Code of Civil Procedure,  
13 and the court's review of compliance or noncompliance with this  
14 part shall extend to whether the plan, or portion thereof, or revision  
15 thereto, substantially complies with the requirements of this part.

16 (b) An action or proceeding alleging failure to adopt a plan shall  
17 be commenced within 18 months after that adoption is required  
18 by this part.

19 (c) Any action or proceeding alleging that a plan, or action taken  
20 pursuant to the plan, does not comply with this part shall be  
21 commenced within 120 days after submitting the plan or  
22 amendments to the plan to entities in accordance with Section  
23 10844 or the taking of that action.

24 (d) In an action or proceeding to attack, review, set aside, void,  
25 or annul the acts or decisions of an agricultural water supplier  
26 made pursuant to this part at a properly noticed public hearing, the  
27 issues raised shall be limited to those raised in the public hearing,  
28 or in written correspondence delivered to the agricultural water  
29 supplier prior to, or at, the public hearing, except if the court finds  
30 either of the following:

31 (1) The issue could not have been raised at the public hearing  
32 by a person exercising reasonable diligence.

33 (2) The body conducting the public hearing prevented the issue  
34 from being raised at the public hearing.

35 10851. The California Environmental Quality Act (Division  
36 13 (commencing with Section 21000) of the Public Resources  
37 Code) does not apply to the preparation and adoption of plans  
38 pursuant to this part. This part does not exempt projects for  
39 implementation of the plan or for expanded or additional water  
40 supplies from the California Environmental Quality Act.

1     10852. An agricultural water supplier that does not prepare,  
2     adopt, and submit its agricultural water management plan in  
3     accordance with this part is ineligible to receive funds made  
4     available pursuant to any program administered by the board, the  
5     department, or the California Bay-Delta Authority, or participate  
6     in any drought assistance program administered by the state, until  
7     the agricultural water management plan is submitted pursuant to  
8     this part.

9     SEC. 5. This act shall only become operative if \_\_\_\_ of the  
10    2009–10 Regular Session of the Legislature are enacted and  
11    become effective on or before January 1, 2010.

## **2009 Delta & Water Reform Legislation – October 12 Urban and Agricultural Water Use Efficiency**

**SUMMARY:** Requires the state to achieve a 20% reduction in urban per capita water use in California by December 31, 2020, requires agricultural water management plans and efficient water management practices for agricultural water suppliers, and promotes expanded development of sustainable water supplies at the regional level. Specifically, this proposal:

- 1) Establishes statewide urban water conservation target of 10% by 2015, and 20% by 2020.
- 2) Establishes processes for urban water suppliers to meet the conservation targets:
  - a) Requires urban retail water suppliers, individually or on a regional basis, to develop an urban water use target by July 1, 2011;
  - b) Provides 4 methodologies for urban water suppliers to choose from to set and achieve their water use target:
    - i) 20% reduction in baseline daily per capita use, or
    - ii) Combination of efficiency standards for residential indoor use [55 gallons per capita daily (gpcd)]; residential outdoor use (Model Water Efficient Landscape Ordinance); and commercial, industrial, and institutional (CII) use (10 % reduction); or,
    - iii) 5% reduction in the Department of Water Resources (DWR) regional targets; or
    - iv) A method to be developed by DWR by December 31, 2010.
  - c) Requires minimum 5 % reduction in base water use by 2020 for all urban water suppliers.
  - d) Allows recycled water to count toward meeting urban supplier's water use target if recycled water offsets potable water demands.
  - e) Allows urban suppliers to consider certain differences in their local conditions when determining compliance.
  - f) Requires urban water suppliers to hold public hearings to allow for community input on the supplier's implementation plan for meeting their water use target, and requires the implementation to avoid placing a disproportionate burden on any customer sector.
  - g) Conditions eligibility for water management grants and loans on an urban water supplier's compliance with meeting the requirements established by the bill.
- 3) Prohibits urban suppliers from requiring changes that reduce process water – defined in the bill as water used in production of a product – and allows urban water supplier to exclude process water from the development of the urban water target if substantial amount of its water deliveries are for industrial use.
- 4) Requires DWR review and reporting on urban water management plans and report to the Legislature by 2016 on progress in meeting the 20% statewide target, including recommendations on changes to the standards or targets in order to achieve the 20% target.

- 5) Creates a CII Task Force to develop best management practices (BMPs), assess the potential for statewide water savings if the BMPs are implemented, and report to the Legislature.
- 6) Re-establishes agricultural water management planning program.
  - a) Defines "agricultural water supplier" as one that delivers water to 10,000 or more of irrigated acres, excluding recycled water, but exempts suppliers serving less than 25,000 irrigated areas unless funding is provided to the supplier for those purposes.
  - b) Requires development and implementation of agricultural water management plans, with specified components by 2012, with 5-year updates.
  - c) Requires DWR to review plans and report to the Legislature on status and effectiveness.
  - d) Requires two "critical" efficient agricultural water management practices (measurement and pricing) and – only if locally cost-effective – 14 additional practices.
  - e) Conditions eligibility for water management grants and loans on an agricultural water suppliers' compliance with meeting the requirements for implementation of efficient water management practices.
  - f) Establishes agricultural water supplier reporting requirements on agricultural efficient water management practices.
- 7) Requires DWR to promote implementation of regional water resource management practices through increased incentives/removal of barriers and specifies potential changes.
- 8) Requires DWR, in consultation with SWRCB, to develop or update statewide targets as to recycled water, brackish groundwater desalination, and urban stormwater runoff.

## COMMENTS

Proposed Agreement: Since SB 68 was heard by the Assembly Water, Parks and Wildlife (WP&W) Committee on September 11, the following amendments related to water conservation have been proposed:

- 1) Amend Section 10608.8 to do the following:
  - Include the water use efficiency measures adopted pursuant to Part 2.8 (agricultural water management) to receive the protections provided by Water Code Section 1011.
  - Specify that the failure of an urban water supplier to meet their conservation targets can not be used as evidence of waste and unreasonable use proceedings.
- 2) Amend Water Code Section 375 to be consistent with restrictions on process water included in Section 10608.26(d)1.
- 3) Amend Section 10608.20 by adding a 4<sup>th</sup> option for an urban water supplier to choose from to develop an urban water use target. The 4<sup>th</sup> option is a method to be developed by the department by December 31, 2010 and which would consider difference in local land use patterns and climate.
- 4) Amend Section 10608.26 to expand the list of Health and Safety conditions that will not be impacted by the water conservation requirements.
- 5) Amend Section 10608.28 to authorize a regional water management group to meet the conservation requirements of the bill if an urban water supplier provides written consent.
- 6) Amend Section 10608.43 to require the CII task force to consult with the Department of Water Resource prior to submitting their report to the Legislature on new water use efficiency measures for CII.

Urban Water Conservation: This bill would establish a statewide target to reduce urban per capita water use by 20 percent by 2020. This target is consistent with the Governor's February 2008 proposal. The Delta Vision Strategic Plan also recommended legislation requiring "Urban

water purveyors to implement measures to achieve a 20 percent reduction in urban per capita water use statewide throughout California by December 31, 2020.” This bill would require urban retail water suppliers, individually or on a regional basis, to develop an urban water use target by December 31, 2010, would require each urban water supplier to meet their target by 2020, and to meet an interim target (half of their 2020 target) by 2015.

Flexibility. This bill provides options for how water agencies can achieve higher levels of water conservation but requires those options to meet a per capita reduction in water use. The bill sets the “20 by 2020” target (and the interim 2015 target) for the entire state and then allows water agencies to choose one of four methods for determining their own water-use target for 2020. Water suppliers also can choose to join with a broader group of suppliers to meet the targets regionally. Finally the bill provides urban water suppliers with the option of shifting more water use to recycled water to meet their targets.

Commercial, Industrial and Institutional (CII) Water Management: This bill restricts urban water suppliers from imposing conservation requirements on process water. Other sections of the proposal address other CII concerns, including requiring urban water suppliers to avoid disproportionate impacts on any one sector and requiring an open transparent process for all water customers to review and provide input into the water supplier implementation plan. There are also no mandated conservation requirements or targets in the bill for CII.

Agricultural Water Management: For agriculture, this bill relies on implementation of efficient water management practices (EWMPs) for water use, which have been developed, at least in part, by the Agricultural Water Management Council (AWMC). The bill creates two EWMP categories: “critical” that all agricultural water suppliers (*i.e.* measurement and pricing structures) must implement and “additional” EWMPs that must be implemented if the measures are locally cost effective and technically feasible. The two mandatory EWMPs are already required of all federal water contractors (*e.g.* Westlands WD and Friant WA) since 1992 under the Central Valley Project Improvement Act (CVPIA).

Agricultural Water Management Plans: This bill reauthorizes dormant provisions of the Water Code that required agricultural water suppliers to prepare agricultural water management plans. This places agricultural water suppliers on an equal footing with urban suppliers who have been required to prepare and submit water management plans for approximately 15 years. This bill defines agricultural water suppliers as those with 10,000 acres of irrigated land, but exempts from the bill’s requirements any supplier serving less than 25,000 of irrigated land if the state does not provide funding for implementation.

Sustainable Water Management: This bill requires DWR to develop incentives for sustainable water management and alternative water supplies such as brackish water desalination and stormwater recovery.

Analysis Prepared by: Alf W. Brandt & Kate Williams / W., P. & W. / (916) 319-2096

**SB X7 1 (Steinberg) – October 23, 2009**  
**Delta & Water Reform Legislation**  
**SUMMARY: Urban and Agricultural Water Conservation**

SUMMARY: Requires state to achieve 20% reduction in urban per capita water use by December 31, 2020, requires agricultural water management plans and efficient water management practices for agricultural water suppliers, and promotes expanded development of sustainable water supplies at the regional level. Specifically, this part of SB X7 1:

- 1) Establishes statewide urban water conservation target of 10% by 2015, and 20% by 2020.
- 2) Establishes processes for urban water suppliers to meet the conservation targets:
  - a) Requires urban retail water suppliers, individually or on a regional basis, to develop an urban water use target by July 1, 2011;
  - b) Provides 4 methodologies for urban water suppliers to choose from to set and achieve their water use target:
    - i) 20% reduction in baseline daily per capita use, or
    - ii) Combination of efficiency standards for residential indoor use [55 gallons per capita daily (gpcd)]; residential outdoor use (Model Water Efficient Landscape Ordinance); and commercial, industrial, and institutional (CII) use (10 % reduction); or,
    - iii) 5% reduction in the Department of Water Resources (DWR) regional targets; or
    - iv) A method to be developed by DWR by December 31, 2010.
  - c) Requires minimum 5 % reduction in base water use by 2020 for all urban water suppliers.
  - d) Allows recycled water to count toward meeting urban supplier's water use target if recycled water offsets potable water demands.
  - e) Allows urban suppliers to consider certain differences in their local conditions when determining compliance.
  - f) Requires urban water suppliers to hold public hearings to allow for community input on the supplier's implementation plan for meeting their water use target, and requires the implementation to avoid placing a disproportionate burden on any customer sector.
  - g) Conditions eligibility for water management grants and loans on an urban water supplier's compliance with meeting the requirements established by the bill.
- 3) Prohibits urban suppliers from requiring changes that reduce process water – defined in the bill as water used in production of a product – and allows urban water supplier to exclude process water from the development of the urban water target if substantial amount of its water deliveries are for industrial use.



- 4) Requires DWR review and reporting on urban water management plans and report to the Legislature by 2016 on progress in meeting the 20% statewide target, including recommendations on changes to the standards or targets in order to achieve the 20% target.
- 5) Creates a CII Task Force to develop best management practices (BMPs), assess the potential for statewide water savings if the BMPs are implemented, and report to the Legislature.
- 6) Re-establishes agricultural water management planning program.
  - a) Defines "agricultural water supplier" as one that delivers water to 10,000 or more of irrigated acres, excluding recycled water, but exempts suppliers serving less than 25,000 irrigated areas unless funding is provided to the supplier for those purposes.
  - b) Requires development and implementation of agricultural water management plans, with specified components by 2012, with 5-year updates.
  - c) Requires DWR to review plans and report to the Legislature on status and effectiveness.
  - d) Requires two "critical" efficient agricultural water management practices (*EWMP*) -- measurement and pricing-- and only if locally cost-effective for 14 additional practices.
  - e) Conditions eligibility for water management grants and loans on an agricultural water suppliers' compliance with meeting the requirements for implementation of efficient water management practices.
  - f) Establishes agricultural water supplier reporting requirements on agricultural efficient water management practices.
- 7) Requires DWR to promote implementation of regional water resource management practices through increased incentives/removal of barriers and specifies potential changes.
- 8) Requires DWR, in consultation with SWRCB, to develop or update statewide targets as to recycled water, brackish groundwater desalination, and urban stormwater runoff.

## COMMENTS

Changes from SB 68: Since Assembly Water, Parks and Wildlife (WP&W) Committee heard SB 68 (regular session version of this bill) on September 11, this bill changes the water conservation provisions to:

- 1) Protect existing rights to water resulting from conservation efforts:
  - Clarify protection provided by Water Code Section 1011 for conserved water through the agricultural water use efficiency measures specified by the bill.
  - Refers to use of information on an urban retail water supplier's failure to meet per capita targets in administrative proceedings, with a blank as to such use, but providing that underlying data may be used in such proceedings or litigation.
- 2) Expand provisions relating to "process water"
  - Amend Water Code Section 375 (allowing agencies to limit water in emergencies) to be consistent with protections on process water included in Section 10608.26(d)(1).
  - Amend process water protections to apply only to existing customers as of January 1, 2010 the date the bill would become effective.
  - Amend Section 10608.20(h) to require DWR to develop regulations related to process water requirements.
- 3) Add a 4<sup>th</sup> for an urban water supplier to develop an urban water use target (§10608.20). The 4<sup>th</sup> option is a method to be developed by DWR by December 31, 2010 that would consider differences in local land use patterns and climate.

- 4) Amend Section 10608.26 to expand the list of Health and Safety conditions that will not be impacted by the water conservation requirements.
- 5) Amend Section 10608.28 to authorize a regional water management group to meet the conservation requirements of the bill if an urban water supplier provides written consent.
- 6) Amend Section 10608.43 to require the CII task force to prepare their report to the Legislature in conjunction with the Department of Water Resource.
- 7) Agricultural water amendments:
  - Amend Section 10608.48 (b) (1) to delete requirement that the measurement EWMP be implemented sufficient to adopt volumetric pricing.
  - Amend Section 101608.48(h) to delete the department authority to update the mandated critical BMPs related to measurement and pricing without future legislative action.
  - Amend Section 10608.64 to clarify that the department's report on proposed methodologies for quantifying agricultural water use efficiency does not provide authority for the department to implement the methodologies.

Urban Water Conservation: This bill would establish a statewide target to reduce urban per capita water use by 20 percent by 2020. This target is consistent with the Governor's February 2008 proposal. The Delta Vision Strategic Plan also recommended legislation requiring "Urban water purveyors to implement measures to achieve a 20 percent reduction in urban per capita water use statewide throughout California by December 31, 2020." This bill would require urban retail water suppliers, individually or on a regional basis, to develop an urban water use target by December 31, 2010, would require each urban water supplier to meet their target by 2020, and to meet an interim target (half of their 2020 target) by 2015.

Flexibility. This bill provides options for how water agencies can achieve higher levels of water conservation but requires those options to meet a per capita reduction in water use. The bill sets the "20 by 2020" target (and the interim 2015 target) for the entire state and then allows water agencies to choose one of four methods for determining their own water-use target for 2020. Water suppliers also can choose to join with a broader group of suppliers to meet the targets regionally. Finally the bill provides urban water suppliers with the option of shifting more water use to recycled water to meet their targets.

Commercial, Industrial and Institutional (CII) Water Management: This bill restricts urban water suppliers from imposing conservation requirements on process water. Other sections of the proposal address other CII concerns, including requiring urban water suppliers to avoid disproportionate impacts on any one sector and requiring an open transparent process for all water customers to review and provide input into the water supplier implementation plan. There are also no mandated conservation requirements or targets in the bill for CII.

Agricultural Water Management: For agriculture, this bill relies on implementation of efficient water management practices (EWMPs) for water use, which have been developed, at least in part, by the Agricultural Water Management Council (AWMC). The bill creates two EWMP categories: "critical" that all agricultural water suppliers (*i.e.* measurement and pricing structures) must implement and "additional" EWMPs that must be implemented if the measures are locally cost effective and technically feasible. The two mandatory EWMPs are already required of all federal water contractors (*e.g.* Westlands WD and Friant WA) since 1992 under the Central Valley Project Improvement Act (CVPIA).

Agricultural Water Management Plans: This bill reauthorizes dormant provisions of the Water Code that required agricultural water suppliers to prepare agricultural water management plans. This bill places agricultural water suppliers on an equal footing with urban suppliers who have been required to prepare and submit water management plans for approximately 15 years. This bill defines agricultural water suppliers as those with 10,000 acres of irrigated land, but exempts from the bill's requirements any supplier serving less than 25,000 of irrigated land if the state does not provide funding for implementation.

Sustainable Water Management: This bill requires DWR to develop incentives for sustainable water management and alternative water supplies such as brackish water desalination and stormwater recovery.

Summary Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096



## California State Legislature

# THE 2009 DELTA & WATER LEGISLATION Legislative History

### IV. Water Rights Enforcement Tools

- A. Senate Natural Resources & Water Informational Hearing
- B. Predecessor Bills
  - 1. SB 681 (Pavley)
  - 2. SB 229 (Pavley)
  - 3. AB 900 (DeLeon)
- C. Development of Water Conservation Legislation
- D. Final Outcome – SB 8 (Steinberg)

***INFORMATIONAL HEARING  
OVERVIEW OF CALIFORNIA WATER RIGHTS LAWS***

**9:00 a.m. to 12:00 p.m.  
Tuesday, March 10, 2009  
Room 112**

**9:00 a.m. Opening Remarks**

**9:10 a.m. Overview of California Water Rights Law**  
Cliff Lee, Deputy Attorney General

**10:00 a.m. How California Manages Its Water Rights**  
State Water Resources Control Board  
• Tom Howard, Chief Deputy Director  
• Andrew H. Sawyer, Assistant Chief Counsel  
  
Department of Water Resources  
• Mark Cowin, Deputy Director

**11:00 a.m. Issues and Perspectives**  
Catherine Freeman, Legislative Analyst Office  
Antonio Rossmann, UC Berkeley School of Law  
Michael Hanemann, UC Berkeley, Department of Agricultural & Resource Economics  
David R. E. Aladjem, Partner, Downey Brand;  
Chair, American Bar Association Water Resources Committee

**11:50 a.m. Public Comments**

**12:00 p.m. Adjourn**

## SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Fran Pavley, Chair  
2009-2010 Regular Session

**BILL NO:** SB 681

**AUTHOR:** Pavley

**VERSION:** April 20, 2009

**DUAL REFERRAL:** No

**SUBJECT:** Water diversion and use.

**HEARING DATE:** April 28, 2009

**URGENCY:** No

**CONSULTANT:** Dennis O'Connor

**FISCAL:** Yes

### BACKGROUND AND EXISTING LAW

During its 2005-2006 Regular Session, the Legislature passed and the Governor signed Assembly Bill 1200 (Laird), Senate Bill 1574 (Kuehl), and Assembly Bill 1803 (Committee on Budget). Together, these bills required an assessment of the potential impacts on water supplies of catastrophic failures in the Delta, identification and evaluation of options to protect water supplies and the ecosystem of the Delta, the development of a vision for a sustainable Delta, and a strategic plan to achieve a sustainable Sacramento-San Joaquin Delta.

Specifically, SB 1574 created a Delta Vision Committee to develop the vision and strategic plan. The Committee is composed of the Secretary of the Resources Agency as chair, and the Secretaries of the Business, Transportation and Housing Agency, Department of Food and Agriculture, and the California Environmental Protection Agency, and the President of the Public Utilities Commission.

On September 28, 2006, the Governor issued an Executive Order that, among other things, established a Blue Ribbon Task Force and directed the Task Force to:

- Develop a vision for the sustainable management of the Delta,
- Report to the to the Delta Vision Committee and Governor its findings and recommendations on its vision for the Delta by January 1, 2008, and
- Develop a strategic plan to implement the delta vision by October 31, 2008.

The Executive Order further directed the Delta Vision Committee to report to the Governor and the Legislature by December 31, 2008 with recommendations for implementing the Delta Vision and Strategic Plan.

In October, 2008, the Blue Ribbon Task Force published its *Delta Vision Strategic Plan* and on January 5, 2009, the Delta Vision Committee submitted its final *Implementation Plan* to Gov. Arnold Schwarzenegger. The implementation plan recommended management actions in the California Delta to fulfill the report's recommended two co-equal goals of water supply reliability and ecosystem restoration. The implementation plan sets priorities based on the Delta Vision Strategic Plan developed by the Governor's Delta Vision Blue Ribbon Task Force.

Among the recommended actions requiring new authority were the following:

Water Rights Accountability – Enact legislation in 2010 to enhance and expand the State Water Resources Control Board's water rights administrative accountability. These recommendations are not intended to adversely affect the current water right priority system, including area-of-origin priorities but rather to strengthen the current administrative system. Appropriate enforcement will protect existing water rights.

- The State Water Resources Control Board needs authority to collect and disseminate accurate information on all surface water diversions in the state. Consequently, all statutory exemptions from water diversion and use reporting should be repealed and enforcement authority extended, and a streamlined process implemented requiring complete, timely, and accurate information from all diverters. The gathering and submittal of this information should be as easy as possible, as described below.
- The Water Board needs authority to require interim remedies, after opportunity for hearing, to prevent irreparable harm to the environment and other water right holders, while underlying proceedings continue. Interim remedies could include requiring the diverter to take appropriate action to mitigate potential harm or to provide necessary information. As with courts, Water Board evidentiary proceedings can take many years. Unlike courts, however, the Water Board currently has no authority to issue interim orders designed to prevent irreparable harm.
- Further, the Water Board needs to clarify existing water rights in many parts of the State in light of poorly defined or unreported riparian and appropriative water right claims and the unquantified needs of fish and wildlife. The Board needs the authority to initiate stream adjudications and collect adjudication costs from the parties diverting water. This process will respect area of origin rights.
- Many existing water right permit terms and conditions are not directly enforceable, and the law should be amended to correct this problem.

Water Use Reporting - Ensure the sustainability of water supplies by improving water diversion and use reporting, strengthening water rights accountability, and increasing water use efficiency. Enact legislation to streamline and simplify water diversion and use reporting requirements to reduce the reporting burden on local agencies and improve the quantity and quality of water diversion and use data. The legislation should mandate electronic submission of water diversion and use data to a central database. In addition, a pilot project should be mandated to install real-time telemetered monitoring devices on surface water diversions in the Delta and its tributaries. The pilot project should be extended to all diversions above a specified size upon successful completion of the pilot.

## **PROPOSED LAW**

This bill would enact the recommendations of the Delta Vision Committee on water rights and water use reporting. It would:

- Streamline the State Water Board's waste and unreasonable use authority and improve enforcement for failure to meet water conservation requirements, resulting in water conservation improvements.
- Improve monitoring and reporting, including authority to collect and disseminate information on all surface water diversions in the state, eliminate exemptions from requirements for filing of statements of diversion and use, and establish enforcement authority for monitoring and reporting violations.
- Establish a pilot program for real-time telemetered monitoring of Delta diversions, although it does not specify whether the State Water Board or the Department of Water Resources is responsible for the program.



- Improved enforcement, including authority to directly enforce water right terms and conditions, interim relief authority, and increased administrative penalties.
- Authority to initiate stream system adjudications and collect adjudication costs.

## **ARGUMENTS IN SUPPORT**

According to the author, “At our recent hearing on Delta vision, I was shocked to find out that the State Water Resources Control Board had concluded that water users have been promised 8.4 times the average annual unimpaired flows in the Delta watershed! Not only that, the face value of these permits is 3.4 times more than the highest annual unimpaired flows! Then, at our subsequent hearing on California Water Rights law, we found out that pending water right applications would divert an additional 4.2 million acre-feet of water within the Delta watershed. The author also stated that, “We learned that the Blue Ribbon Task Force, led by Phil Isenberg, and the Delta Vision Committee, led by Secretary Mike Chrisman, have done the state a great service in both identifying critical problems with our state’s water rights system and recommending solutions to those problems.”

## **ARGUMENTS IN OPPOSITION**

Responding to the previous version of this bill, that dealt only with statutory adjudication, the Association of California Water Agencies wrote, “SB 681 would authorize the SWRCB to undertake such investigations and determinations of water rights on its own motion. The SWRCB would be able to initiate adjudications of any streams it found interesting and then charge water users for the full costs of them – including salaries – under Water Code sections 2851-2852. This bill would open the door for the SWRCB to fund the Division of Water rights through charges on water-users without working on any applications or petitions that water users themselves have filed.”

## **COMMENTS**

Needs Vetting. This is a technically complicated bill that was only recently amended to include its full provisions. In addition to the important policy issues raised by this bill, there are likely to be important technical legal issues as well. Should this bill move forward, the author has committed to engage interested parties in a more robust discussion of the legal issues posed by this bill.

Interim Relief. While the policy implications of the other provisions of this bill might be somewhat clear, those regarding interim relief might not. In a July 31, 2008 letter to the Delta Vision Blue Ribbon Task Force, the State Water Board explained “why interim relief authority would be helpful to the Board in water right matters and why the Board believes that its existing water right authority is insufficient to impose interim relief. For purposes of this discussion, interim relief refers to expedited procedures, similar to those followed by a court in issuing a preliminary injunction, for issuance of an order providing protection on an interim basis pending completion of administrative proceedings applying and enforcing water right law.”

The letter continued: “The State Water Board is responsible for establishing and maintaining a stable system of water rights in California to best develop, conserve and utilize in the public interest the water resources of the State, while protecting vested rights, water quality and the public trust. Effective water right administration depends, in part, on adequate and timely enforcement. The State Water Board and the courts have concurrent jurisdiction over actions to enforce water right law, including proceedings brought in response to violations of water right

permits and licenses, violations of the public trust doctrine, or waste or unreasonable use of water. But only the courts can take immediate relief action, typically in the form of a temporary restraining order or a preliminary injunction, without opportunity for a full evidentiary hearing. In addition, unlike the Board, the courts are not required to comply with the California Environmental Quality Act (CEQA) before taking action.”

“In some cases it is necessary to take prompt action to prevent irreparable harm to water right holders or instream uses. Without the capacity to impose interim relief, activities that damage the environment can continue during the length of an adjudicative proceeding, without any requirement that the violator take steps to avoid or reduce the damage. The ability to provide for interim relief pending the completion of an evidentiary hearing would allow urgent decisions to be made in a timely manner, eliminate the need for duplicative proceedings in court, and better protect the state’s water resources.”

**SUGGESTED AMENDMENTS:** None

**SUPPORT**

None Received

**OPPOSITION**

Association of California Water Agencies

**Senate Appropriations Committee Fiscal Summary**  
**Senator Christine Kehoe, Chair**

**SB 681 (Pavley)**

**Hearing Date:** 05/28/2009

**Amended:** 04/20/2009

**Consultant:** Brendan McCarthy

**Policy Vote:** NR&W 6-4

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**BILL SUMMARY:** SB 681 makes several changes to the regulation of water rights in the state. The bill would give the State Water Resources Control Board additional regulatory authority with respect to water rights. It would require additional monitoring of water diversions. It would establish a pilot program for monitoring diversions of water in the Delta. It would also give the Water Board the authority to initiate adjudications of streams and rivers.

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<b>Fiscal Impact (in thousands)</b>				
<b><u>Major Provisions</u></b>	<b><u>2009-10</u></b>	<b><u>2010-11</u></b>	<b><u>2011-12</u></b>	<b><u>Fund</u></b>
Monitoring water diversions	\$765	\$1,400	\$1,400	General / Special *
Delta pilot program		\$400	\$400	General / Special *
Administering interim relief measures	\$50	\$100	\$100	General / Special *
Issuing orders for violations of reporting requirements	Unknown			General / Special *
Stream adjudications	Unknown			Special **

\* Water Rights Fund. Potentially offset by fees.

\*\* Water Rights Fund. Fully offset by fees.

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**STAFF COMMENTS: Suspense file.**

Current law gives authority for the regulation of water rights in the state to the State Water Resources Control Board. The legal and regulatory system governing water rights in the state is very complicated, with differing legal requirements governing differing kinds of water rights. In general, water rights holders are required to report their diversions of water to the Water Board.

SB 681 would make several changes to the laws governing water rights, particularly to the notification and monitoring requirements and the Water Board's regulatory powers. The bill requires the Water Board to develop and maintain a publicly accessible database of water diversions and water use. While the Water Board currently has a database that contains some of this information, it is not accessible to the public. In

addition, the database is far from comprehensive. The Board estimates that there will be significant costs to upgrade the database and to ensure that water diversion data input to the database is accurate.

The bill gives the Water Board additional power to require monitoring and disclosure of water diversions and uses. The bill increases administrative penalties for illegal diversions of water.

The bill requires the Water Board to establish a pilot program to monitor water diversions in the Sacramento-San Joaquin River Delta and its tributaries. The Water Board estimates the costs to develop such a system to be about \$400,000 per year.

The bill gives the Water Board the authority to use “interim relief measures” (similar to a temporary restraining order or preliminary injunction issued by a court) to enforce existing statutory and constitutional water quality protection requirements. The Water Board has estimated the costs to use this authority would be about \$100,000 per year. However, it is impossible to know for certain how often this authority would be used.

The bill authorizes the Water Board to issue a cease and desist order to any party that fails to comply with reporting or monitoring requirements of the Water Board. The Water Board estimates that this will cost more than \$8 million per year to adequately ensure compliance with existing reporting requirements. Staff notes that this section of the bill is permissive, but does not require the board to institute an expanded program to ensure compliance with reporting requirements, therefore these costs have not been included as a required cost of the bill in this analysis.

The bill gives the Water Board the authority to initiate stream adjudications. Under current law, water rights holders who have a dispute over water diversions can begin a process of adjudication before the Water Board, to settle which parties have rights to water in the stream. The process of adjudication is very complex and time consuming. The Water Board estimates that it would expend about \$4 million per year in self-initiated adjudications. Staff notes that the number of adjudications that would occur in the future is unknown, but that the bill allows the Water Board to recoup its costs from the parties to the adjudication.

Staff notes that the water rights program at the Water Board is largely funded by fees paid by water rights holders. Currently, a case is pending before the California Supreme Court challenging the fee structure previously adopted by the Water Board. It is likely that the regulatory activities required or authorized under this bill could ultimately be funded with regulatory fees. However, until the court case is resolved, additional costs in this program may have to be paid for with General Fund money.

**SENATE RULES COMMITTEE**SB 681

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**THIRD READING**

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Bill No: SB 681

Author: Pavley (D)

Amended: 6/1/09

Vote: 21

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SENATE NATURAL RES. & WATER COMMITTEE: 6-4, 4/28/09

AYES: Pavley, Kehoe, Leno, Simitian, Wiggins, Wolk

NOES: Cogdill, Benoit, Hollingsworth, Huff

NO VOTE RECORDED: Padilla

SENATE APPROPRIATIONS COMMITTEE: 7-5, 5/28/09

AYES: Kehoe, Corbett, DeSaulnier, Hancock, Leno, Oropeza, Yee

NOES: Cox, Denham, Runner, Walters, Wyland

NO VOTE RECORDED: Wolk

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**SUBJECT:** Water diversion and use**SOURCE:** Author

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**DIGEST:** This bill enacts the recommendations of the Delta Vision Committee on water rights and water use reporting. Specifically, this bill gives the State Water Resources Control Board (SWRCB) additional regulatory authority with respect to water rights. It requires additional monitoring of water diversions. It establishes a pilot program for monitoring diversions of water in the Delta. It also gives the SWRCB the authority to initiate adjudications of streams and rivers.

**ANALYSIS:** During its 2005-2006 Regular Session, the Legislature passed and the Governor signed AB 1200 (Laird), SB 1574 (Kuehl), and AB 1803 (Assembly Budget Committee). Together, these bills required an assessment of the potential impacts on water supplies of catastrophic failures

CONTINUED

in the Delta, identification and evaluation of options to protect water supplies and the ecosystem of the Delta, the development of a vision for a sustainable Delta, and a strategic plan to achieve a sustainable Sacramento-San Joaquin Delta.

Specifically, SB 1574 created a Delta Vision Committee to develop the vision and strategic plan. The Committee is composed of the Secretary of the Resources Agency as chair, and the Secretaries of the Business, Transportation and Housing Agency, Department of Food and Agriculture, and the California Environmental Protection Agency, and the President of the Public Utilities Commission.

On September 28, 2006, the Governor issued an Executive Order that, among other things, established a Blue Ribbon Task Force and directed the Task Force to:

1. Develop a vision for the sustainable management of the Delta.
2. Report to the to the Delta Vision Committee and Governor its findings and recommendations on its vision for the Delta by January 1, 2008.
3. Develop a strategic plan to implement the delta vision by October 31, 2008.

The Executive Order further directed the Delta Vision Committee to report to the Governor and the Legislature by December 31, 2008, with recommendations for implementing the Delta Vision and Strategic Plan.

This bill enacts the recommendations of the Delta Vision Committee on water rights and water use reporting. It:

1. Streamlines SWRCB's waste and unreasonable use authority and improve enforcement for failure to meet water conservation requirements, resulting in water conservation improvements.
2. Improves monitoring and reporting, including authority to collect and disseminate information on all surface water diversions in the state, eliminate exemptions from requirements for filing of statements of diversion and use, and establish enforcement authority for monitoring and reporting violations.

3. Improves enforcement, including authority to directly enforce water right terms and conditions, interim relief authority, and increased administrative penalties.
4. Provides authority to initiate stream system adjudications and collect adjudication costs.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)				
<u>Major Provisions</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>Fund</u>
Monitoring water diversions	\$765	\$1,400	\$1,400	General/ Special*
Delta pilot program		\$400	\$400	General/ Special*
Administering interim relief measures	\$50	\$100	\$100	General/ Special*
Issuing orders for violations of reporting requirements	Unknown			General/ Special*
Stream adjudications	Unknown			Special**

\* Water Rights Fund. Potentially offset by fees.

\*\* Water Rights Fund. Fully offset by fees.

**SUPPORT:** (Verified 6/1/09)

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**OPPOSITION:** (Verified 6/1/09)

Association of California Water Agencies

**ARGUMENTS IN SUPPORT:** According to the author, “At our recent hearing on Delta vision, I was shocked to find out that the State Water

CONTINUED



Resources Control Board had concluded that water users have been promised 8.4 times the average annual unimpaired flows in the Delta watershed! Not only that, the face value of these permits is 3.4 times more than the highest annual unimpaired flows! Then, at our subsequent hearing on California Water Rights law, we found out that pending water right applications would divert an additional 4.2 million acre-feet of water within the Delta watershed. The author also stated that, “We learned that the Blue Ribbon Task Force, led by Phil Isenberg, and the Delta Vision Committee, led by Secretary Mike Chrisman, have done the state a great service in both identifying critical problems with our state’s water rights system and recommending solutions to those problems.”

**ARGUMENTS IN OPPOSITION:** Responding to the previous version of this bill, that dealt only with statutory adjudication, the Association of California Water Agencies wrote, “SB 681 would authorize the SWRCB to undertake such investigations and determinations of water rights on its own motion. The SWRCB would be able to initiate adjudications of any streams it found interesting and then charge water users for the full costs of them – including salaries – under Water Code sections 2851-2852. This bill would open the door for the SWRCB to fund the Division of Water rights through charges on water-users without working on any applications or petitions that water users themselves have filed.”

CTW:mw 6/1/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

PROPOSED CONFERENCE REPORT NO. 1 - September 9, 2009

SB 229 (Pavley)

As Amended July 9, 2009

Majority vote

SENATE:	(June 3, 2009)	ASSEMBLY:	(July 13, 2009)
	(vote not relevant)		(vote not relevant)

<u>SENATE CONFERENCE VOTE:</u>	4-0	<u>ASSEMBLY CONFERENCE VOTE:</u>	4-0
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Ayes: Steinberg, Pavley, Padilla, Florez	Ayes: Bass, Caballero, Huffman, Solorio
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Original Committee Reference: W., P. & W.

SUMMARY: Revises existing water use reporting requirements, provides for water rights enforcement, and establishes a statewide groundwater elevation monitoring program. Specifically, the conference committee amendments

## 1) Increase consequences for not reporting water diversions or use.

- a) Deem diversions/use did not occur in certain State Water Resources Control Board (SWRCB) proceedings, but would not apply to diversion/use occurring before January 1, 2009;
- b) Create rebuttable presumption that no use occurred in certain SWRCB proceedings, but would not apply to diversion/use occurring before January 1, 2009;
- c) Raise current additional penalty for unauthorized diversions from 100% of amount of fees that would have been collected had that diversion been reported, to 150%;
- d) Authorize additional penalty for failing to file, or material statements in, statements of diversion and use of 150% of the amount of fees that would have been collected; and,
- e) Add a new penalty for violators of monitoring requirements or activities, not to exceed five hundred dollars (\$500) for each day in which the violation occurs.

## 2) Impose or increase penalties for violating water rights laws.

- a) Increase penalties for unauthorized diversion or use to sum of \$1,000 per day of violation plus \$1,000 per acre foot diverted in violation;
- b) Increase penalties for violating a cease and desist order to not more than sum of \$2,500 per day plus \$2,500 per acre foot diverted in violation;
- c) Add penalty, not to exceed \$500 per day of violation, for any violation of term or condition of a permit, license, certificate, or registration, or any order or regulation adopted by SWRCB under preventing waste or unreasonable use; and,
- d) Require SWRCB to adjust all maximum penalties for inflation as measured by the June to June change in the California CPI.

- 3) Expand SWRCB water right enforcement authority.
  - a) Allow SWRCB, in certain investigations, to order any water diverter or water user to prepare technical or monitoring program reports under penalty of perjury;
  - b) Add the following to the list of actions that SWRCB can issue a cease and desist order:
    - i) violations of unreasonable use regulations; and,
    - ii) violations of reporting or monitoring requirements.
  - c) Expand existing legislative intent language to encourage vigorous enforcement to prevent the waste and unreasonable use and reporting/monitoring requirements.
- 4) Expand list of filing fees, to include: registrations for small domestic use or livestock stockpond use; petitions to change the point of diversion, place of use, or purpose of use of a water right that is not subject to a permit or license to appropriate water; and statements of water diversion and use.
- 5) Authorize SWRCB to initiate statutory adjudication to determine rights of various claimants to the water of a stream system *under its own motion* if after a hearing it finds that the public interest and necessity will be served by a determination of the rights involved
- 6) Authorize SWRCB to issue an interim relief order, after notice and an opportunity for a hearing, to enforce specified laws.
  - a) Require SWRCB in deciding on the nature and extent of the relief, to consider all relevant circumstances, using standards required for a preliminary injunction;
  - b) Authorize SWRCB, as part of the interim relief order, to require the water diverter or user to take specified actions, including cease and reimburse SWRCB expenses;
  - c) Exempt interim relief order from CEQA if SWRCB makes specific findings;
  - d) Require the Attorney General, upon the request of SWRCB, to petition the superior court to issue a temporary restraining order, preliminary injunction, or permanent injunction should any water diverter or user fails to comply with any part of an interim relief order; and,
  - e) Provide for civil penalty of not more than \$5,000 for each day in which a violation occurs, subject to certain procedural requirements.
- 7) Establish statewide groundwater monitoring program that would: require.
  - a) Local groundwater management interests to notify DWR as to who would conduct the monitoring of groundwater elevations, what area they would monitor, their qualifications for conducting the monitoring, etc.;

- b) DWR, in situations where more than one party seeks to become the monitoring entity for the same portion of a basin or subbasin, to consult with interested parties to determine who would monitor, based on certain priorities;
- c) Monitoring entities to start monitoring and reporting groundwater elevations by January 1, 2012, and made readily available to DWR, interested parties, and the public;
- d) DWR, by January 1, 2012, to identify extent of monitoring within each basin and subbasin, requiring DWR to determine, in basins without monitoring, if there was a local party willing to conduct the monitoring;
- e) DWR to determine, in basins without local interest in monitoring, certain facts as to need for monitoring, and then monitor groundwater elevations in critical basins, assessing fee on well owners to recover direct costs; and,
- f) DWR to update the groundwater report by January 1, 2012, and thereafter in years ending in 5 and 0.

EXISTING LAW requires SWRCB to administer and enforce surface water rights.

AS PASSED BY THE SENATE, this bill changed the structure and duties of the California Water Commission, relating to the Sacramento-San Joaquin Delta.

The Assembly amendments eliminated substantive provisions and stated legislative intent regarding the Delta.

FISCAL EFFECT: Unknown

COMMENTS: This bill has evolved through several transformations, but all related to California water policy, as part of this year's legislative effort to address the recommendations of the Delta Vision Process. This bill implements the Delta Vision Cabinet Committee's recommendations regarding water rights reporting and enforcement.

Failing to File: This bill significantly increases consequences for not filing required reports on diversion and use, in order to increase compliance. State law has required such reports for decades, but many diverters do not comply, because penalties for non-compliance are minimal. In short, it may make more economic sense to pay a small fine – if the violator is ever discovered – than file the required reports.

The Delta Vision Strategic Plan, while not speaking directly on increased consequences for failing to file required reports, did say:

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.

This bill adds provisions regarding failing to file required diversion and use reports. However, the consequences are different depending on whether the requirements are statutory or imposed by SWRCB. In the case of statutorily required reports, failure to file would create a rebuttable presumption that the diversion or use did not occur. That is, the person or persons who did not file the required reports would be allowed to prove that such diversion or use did occur, but the burden of proof would be upon them. However, if the requirement was imposed by SWRCB as a condition of a water rights permit, as an example, the failure to file would be deemed non-use. Under existing water law, such non-use can result in loss of the right, under certain circumstances.

The issue of better information on diversion and use is also addressed in AB 900 (De Leon), albeit in a different though complementary way. AB 900 would eliminate a number of current exemptions from filing reports of diversion and use. Currently, AB 900 and this bill do not conflict.

Water Rights Enforcement: This bill provides new and increased penalties for violating water rights law and expands SWRCB's authority to enforce water rights laws. In effect, these changes would level the playing field to support better enforcement of water rights laws. These penalties have not been increased in decades and fail to reflect the economic value of compliance. In some cases, there is no penalty at all, such as violation of permit terms. While SWRCB may be able to issue a cease-and-desist order, such actions set a high bar for enforcement and fail to recover enforcement costs.

Delta Vision Committee Implementation Report (a.k.a. the Chrisman Report), dated December 31, 2008, while not commenting on this precise set of penalties and enforcement authorities, called for legislation "to enhance and expand the State Water Resources Control Board's water rights administrative accountability. These recommendations are not intended to adversely affect the current water right priority system, including area-of-origin priorities but rather to strengthen the current administrative system. Appropriate enforcement will protect existing water rights." It later stated that "many existing water right permit terms and conditions are not directly enforceable, and the law should be amended to correct this problem." Despite the Administration's comment about enforcement protecting all water rights, some object to stronger enforcement. It is unclear whether these opponents are violators who wish to avoid enforcement.

Statutory Adjudication: Currently, SWRCB is authorized to conduct stream adjudications only upon petition. This bill would further authorize SWRCB to conduct such adjudications upon its own motion, after conducting a hearing and finding that such adjudication would be in the public interest. In some situations, when water rights holders seek to avoid any adjudication, the loser is the environment, which may have no advocate for clarifying water rights in the context of protecting the public trust. This provision would allow the SWRCB to identify such a problem and begin the clarification process on its own.

Delta Vision Committee Implementation Report observed "the Water Board needs to clarify existing water rights in many parts of the State in light of poorly defined or unreported riparian and appropriative water right claims and the unquantified needs of fish and wildlife. SWRCB needs the authority to initiate stream adjudications and collect adjudication costs from the parties diverting water. This process will respect area of origin rights."

Interim Relief: The bill would authorize SWRCB to require interim remedies as specified. Interim remedies are designed to prevent or halt potentially permanent harm while allowing the full evidentiary process to continue. It protects due process and restores the status quo, so that adjudication of the conflict may proceed without further damage to the environment. It again levels

the playing field for enforcement of water rights law. This provision is patterned after a preliminary injunction proceeding in court, where the court can stop "irreparable" damage while litigation proceeds. It also allows SWRCB to require a violator to pay the costs of developing sufficient information to resolve the conflict.

Delta Vision Committee Implementation Report states "The Water Board needs authority to require interim remedies, after opportunity for hearing, to prevent irreparable harm to the environment and other water right holders, while underlying proceedings continue. Interim remedies could include requiring the diverter to take appropriate action to mitigate potential harm or to provide necessary information. As with courts, Water Board evidentiary proceedings can take many years. Unlike courts, however, the Water Board currently has no authority to issue interim orders designed to prevent irreparable harm."

Groundwater Monitoring: This bill would establish a statewide groundwater monitoring program to ensure that groundwater elevations in all groundwater basins and subbasins be regularly and systematically monitored locally and that the resulting groundwater information be made readily and widely available.

As noted above, the Strategic Plan observed, "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.

In the past five years, the Legislature has approved three bills to improve the State's access to groundwater information, but the Governor vetoed all three. In intervening years, groundwater problems have grown worse, largely because California is the last western state without any state groundwater management – and very little information about the conditions of the state's groundwater basins. Excessive pumping in the last century has led to substantial subsidence, as much as 55 feet in some areas. Recently, for example, on the Westside of the San Joaquin Valley, where allocations of Delta water from the federal Central Valley Project were minimal, farmers responded by pumping more groundwater. DWR then reported that the State Water Project's canal, which passes through the area on its way south, may suffer cracks because of the high level of pumping and resulting slumping of the ground under the canal.

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

FN: 0003144

**SENATE RULES COMMITTEE**

SB 229

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**UNFINISHED BUSINESS**

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Bill No: SB 229

Author: Pavley (D)

Amended: 7/9/09

Vote: 21

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SENATE NATURAL RES. & WATER COMMITTEE: 7-3, 4/14/09

AYES: Pavley, Kehoe, Leno, Padilla, Simitian, Wiggins, Wolk

NOES: Cogdill, Hollingsworth, Huff

NO VOTE RECORDED: Benoit

SENATE APPROPRIATIONS COMMITTEE: 7-5, 5/28/09

AYES: Kehoe, Corbett, DeSaulnier, Hancock, Leno, Oropeza, Yee

NOES: Cox, Denham, Runner, Walters, Wyland

NO VOTE RECORDED: Wolk

SENATE FLOOR: 22-15, 6/3/09

AYES: Alquist, Cedillo, Corbett, DeSaulnier, Ducheny, Florez, Hancock,

Kehoe, Leno, Liu, Lowenthal, Negrete McLeod, Oropeza, Padilla,

Pavley, Romero, Simitian, Steinberg, Wiggins, Wolk, Wright, Yee

NOES: Aanestad, Ashburn, Benoit, Calderon, Cogdill, Correa, Cox,

Denham, Dutton, Hollingsworth, Huff, Runner, Strickland, Walters,

Wyland

NO VOTE RECORDED: Harman, Maldonado, Vacancy

ASSEMBLY FLOOR: 46-24, 7/13/09 - See last page for vote

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**SUBJECT:** Water: Sacramento-San Joaquin Delta

**SOURCE:** Author

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CONTINUED



**DIGEST:** This bill declares legislative intent to enact legislation to authorize actions to be undertaken prior to the adoption of a comprehensive Sacramento-San Joaquin Delta Plan.

Assembly Amendments reduced the language to single lines of intent.

**ANALYSIS:** Existing law requires the Secretary of the Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Sacramento-San Joaquin Delta.

This bill declares legislative intent to enact legislation to authorize actions to be undertaken prior to the adoption of a comprehensive Sacramento-San Joaquin Delta Plan.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**ASSEMBLY FLOOR:**

AYES: Ammiano, Arambula, Beall, Block, Blumenfield, Brownley, Caballero, Charles Calderon, Carter, Chesbro, Coto, Davis, De La Torre, De Leon, Eng, Evans, Feuer, Fong, Fuentes, Furutani, Hall, Hayashi, Hernandez, Hill, Huffman, Jones, Krekorian, Lieu, Bonnie Lowenthal, Ma, Mendoza, Monning, Nava, John A. Perez, V. Manuel Perez, Portantino, Ruskin, Salas, Saldana, Skinner, Solorio, Swanson, Torlakson, Torres, Torrico, Bass

NOES: Adams, Anderson, Tom Berryhill, Blakeslee, Conway, Cook, DeVore, Duvall, Emmerson, Fuller, Gaines, Garrick, Gilmore, Hagman, Harkey, Huber, Jeffries, Knight, Logue, Miller, Nestande, Nielsen, Silva, Tran

NO VOTE RECORDED: Bill Berryhill, Buchanan, Fletcher, Galgiani, Niello, Smyth, Audra Strickland, Villines, Yamada, Vacancy

CTW:mw 7/14/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* END \*\*\*\*

**SENATE RULES COMMITTEE****SB 229**

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**CONFERENCE COMPLETED**

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Bill No: SB 229

Author: Pavley (D)

Amended: Conference Report No. 1 - 9/9/09

Vote: 21

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**CONFERENCE COMMITTEE VOTE:** 8-0, 9/9/09AYES: Senators Steinberg, Florez, Padilla, and Pavley, Assembly Members  
Bass, Solorio, Caballero, and HuffmanNO VOTE RECORDED: Aanestad, Cogdill, Fuller, Huff, Jeffries, Nielsen

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**SUBJECT:** Water: diversion and use: groundwater**SOURCE:** Author

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**DIGEST:** Conference Committee Amendments delete the prior version of the bill declaring legislative intent to enact legislation to authorize actions to be undertaken prior to the adoption of a comprehensive Sacramento-San Joaquin Delta Plan. This bill now provides a comprehensive plan for water diversion and use, establishes a groundwater monitoring program, which expands the role of the Department of Water Resources, and provides civil liability penalties to be adjusted for inflation. Lastly, this bill becomes operative only if the other comprehensive water bills are enacted – AB 39 (Huffman), AB 49 (Feuer and Huffman), SB 12 (Simitian), and SB 458 (Steinberg and Simitian).

**ANALYSIS:** Existing law generally prohibits the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, from being required to pay any fee for the performance of an official service. Existing law exempts from this provision any fee or charge for official services required pursuant to specified provisions of law relating to water use or water quality.

CONTINUED

This bill expands the exemption to other provisions relating to water use, including provisions that require the payment of fees to the State Water Resources Control Board (SWRCB) for official services relating to statements of water diversion and use.

The California Constitution requires the reasonable and beneficial use of water. Under the public trust doctrine, the board, among other state agencies, is required to take the public trust into account in the planning and allocation of water resources and to protect the public trust whenever feasible. The SWRCB and the California regional water quality control boards (RWQCBs) are required to set forth water quality objectives in state and regional water quality control plans. Existing law establishes the Water Rights Fund, which consists of various fees and penalties. The moneys in the Water Rights Fund are available, upon appropriation by the Legislature, for the administration of the board's water rights program.

This bill authorizes the SWRCB to issue, on its own motion or upon the petition of an interested party, an interim relief order in appropriate circumstances to implement or enforce these and related provisions of law. A person or entity that violates any interim relief order issued by the board would be liable to the SWRCB for a civil penalty in an amount not to exceed \$5,000 for each day in which a violation occurs. These funds would be deposited in the Water Rights Fund.

Existing law authorizes the SWRCB to investigate all streams, stream systems, lakes, or other bodies of water, take testimony relating to the rights to water or the use of water, and ascertain whether water filed upon or attempted to be appropriated is appropriated under the laws of the state. Existing law requires the SWRCB to take appropriate actions to prevent waste or the unreasonable use of water. Under existing law, the SWRCB makes determinations with regard to the availability of recycled water.

This bill authorizes the SWRCB, in conducting an investigation or proceeding for these purposes, to order any person or entity that diverts water or uses water to submit, under penalty of perjury, any technical or monitoring report related to the diversion or use of water by that person or entity. By expanding the definition of the crime of perjury, this bill imposes a state-mandated local program. This bill authorizes the SWRCB, in connection with the investigation or proceeding, to inspect the facilities of

any person or entity to determine compliance with specified water use requirements.

Existing law authorizes the board, upon the submission of a petition signed by a claimant to water of any stream system requesting a determination of rights among the claimants to that water, to enter an order granting the petition. After granting the petition, the SWRCB is required to investigate the stream system to gather information necessary to make a determination of the water rights of that stream system.

This bill authorizes the SWRCB to initiate a determination of rights under its own motion if after a hearing it finds that the public interest and necessity will be served by a determination of rights.

Existing law declares that the diversion or use of water other than as authorized by specified provisions of law is a trespass. Existing law authorizes the administrative imposition of civil liability by the SWRCB for a trespass in an amount not to exceed \$500 for each day in which the trespass occurs. Moneys generated by the imposition of civil liability under these provisions are deposited in the Water Rights Fund.

This bill provides that a person or entity committing a trespass may be liable in an amount not to exceed the sum of \$1,000 for each day in which the trespass occurs and \$1,000 for each acre-foot of water diverted or used other than as authorized by those specified provisions of law.

Existing law, with certain exceptions, requires each person who, after December 31, 1965, diverts water to file with the SWRCB a statement of diversion and use.

This bill establishes a rebuttable presumption, in any proceeding before the SWRCB in which it is alleged that an appropriative right has ceased or is subject to prescribed action, that no use required to be included in a statement of diversion and use occurred unless that use is included in a statement that is submitted to the SWRCB within a specified time period.

This bill requires a person who files a statement of diversion and use, and certain petitions involving a change in a water right, to pay an annual fee, for deposit in the Water Rights Fund. This bill includes as recoverable costs, for which the SWRCB may be reimbursed from the fund upon appropriation therefor, costs incurred in connection with carrying out requirements relating

to the statements of diversion and use and the performance of duties under the public trust doctrine and provisions that require the reasonable use of water.

Existing law authorizes the SWRCB to issue a cease and desist order against a person who is violating, or threatening to violate, certain requirements, including requirements set forth in a decision or order relating to the unauthorized use of water. Any person who violates a cease and desist order may be liable in an amount not to exceed \$1,000 for each day in which the violation occurs. Revenue generated from these penalties is deposited in the Water Rights Fund.

This bill authorizes the SWRCB to issue a cease and desist order in response to a violation of certain requirements relating to the unauthorized diversion or use of water or of a reporting or monitoring requirement established under a decision, order, or regulation adopted by the SWRCB pursuant to various provisions of law, including the public trust doctrine. This bill increases the civil penalties that apply to a person who violates a cease and desist order by subjecting a violator to a civil penalty in an amount not to exceed the sum of \$2,500 for each day in which the violation occurs and \$2,500 for each acre-foot of water diverted or used in violation of the cease and desist order.

This bill imposes civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for a failure to comply with various reporting or monitoring requirements, including requirements imposed pursuant to the public trust doctrine. This bill authorize the SWRCB to impose additional civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for the violation of a permit, license, certificate, or registration, or an order or regulation involving the unreasonable use of water. Funds derived from the imposition of these civil penalties would be deposited in the Water Rights Fund.

This bill requires the SWRCB to adjust for inflation, by January 1 of each year, beginning in 2011, the amounts of civil and administrative liabilities or penalties imposed by the board in water right actions, as specified.

This bill requires that, in a proceeding before the SWRCB in which it is alleged that an appropriative water right has ceased, or is subject to prescribed action, there would be a rebuttable presumption that no use occurred on or after January 1, 2009, unless that diversion or use was

reported to the SWRCB within six months after it is required to be filed with the SWRCB.

Existing law authorizes a local agency whose service area includes a groundwater basin that is not subject to groundwater management to adopt and implement a groundwater management plan pursuant to certain provisions of law. Existing law requires a groundwater management plan to include certain components to qualify as a plan for the purposes of those provisions, including a provision that establishes funding requirements for the construction of certain groundwater projects.

This bill establishes a groundwater monitoring program pursuant to which specified entities, in accordance with prescribed procedures, may propose to be designated by the Department of Water Resources (DWR) as groundwater monitoring entities, as defined, for the purposes of monitoring and reporting with regard to groundwater elevations in all or part of a basin or subbasin, as defined. This bill requires DWR to work cooperatively with each monitoring entity to determine the manner in which groundwater elevation information should be reported to DWR. This bill authorizes DWR to make recommendations for improving an existing monitoring program, requires additional monitoring wells under certain circumstances, and requires DWR, under prescribed circumstances, to perform groundwater monitoring functions for those portions of a basin or a subbasin for which no monitoring entity has agreed to perform those functions under this program.

Existing law requires DWR to conduct an investigation of the state's groundwater basins and to report its findings to the Governor and the Legislature not later than January 1, 1980.

This bill repeals that provision. DWR will be required to conduct an investigation of the state's groundwater basins and to report its findings to the Governor and the Legislature not later than January 1, 2012, and every five years thereafter.

These provisions only become operative if AB 39, AB 49, SB 12, and SB 458 of the 2009-10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

CONTINUED

DLW:mw 9/11/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*



Date of Hearing: April 14, 2009

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE

Jared William Huffman, Chair

AB 900 (DeLeon) – As Introduced: February 26, 2009

SUBJECT: Water diversion: statements of water diversion and use.

SUMMARY: Requires measurement and reporting of water diversions within the Sacramento-San Joaquin Delta (Delta) to the State Water Resources Control Board (SWRCB). Specifically, this bill:

- 1) Repeals the exemption from water reporting requirements for "consumptive use data for the delta lowlands" published by the Department of Water Resources (DWR).
- 2) Repeals water diversion reporting exemption for diversions smaller than 50 cubic feet per second (cfs) for diversions within the legal Delta, commencing January 1, 2011.

EXISTING LAW exempts surface water diversions of less than 50 cfs, or diversions by siphons from the tidal zone of the Delta from requirements for measurement and reporting to SWRCB. Delta diversions are also exempt if consumptive use data for the Delta lowlands is published by DWR in its hydrologic data bulletins.

FISCAL EFFECT: Unknown

COMMENTS: This bill would require all in-Delta diverters to record and report all diversions, regardless of method or volume of their diversion, to SWRCB beginning January 1, 2011. Historically, Delta diversions were exempt from water diversion reporting requirements, which date back to 1965, due to the distinct nature of Delta diversions. As discussion of the need for greater information on water diversions, particularly within the Delta's watershed, has developed, the need for information on all diversions has become apparent. The conflict over state and federal water project (CVP/SWP) diversions intensified demand that all Delta diversions be monitored. In October 2008, the Delta Vision Strategic Plan (Plan), issued by the Delta Vision Blue Ribbon Task Force (Task Force), confirmed that need, noted the uncertainty of Delta decisionmaking without accurate reporting, and recommended repeal of the Delta's reporting exemptions. The cabinet-level Delta Vision Committee concurred in that recommendation.

AB 900 would repeal the portion of AB 1404 (Laird) from 2007 that exempts in-Delta diverters from reporting requirements and require those diverters to begin monitoring and reporting as soon as January 2011, rather than 2012 for other diverters. AB 1404 exempted in-Delta users from post-2012 requirements to provide monthly reports of water diversions. The lack of any reporting on in-Delta diversions (other than CVP/SWP diversions) leads to a lack of information on the quantity and timing of diversions within the region. By contrast, the CVP/SWP diversions are tracked with precision. The December 2007 Delta Vision report estimates that in-Delta diversions represent between 4 and 5 percent of total Delta inflow, compared to about 17% for Delta exports. The Task Force's 2008 report stated "the State Board has issued permits for the diversion of water from the Delta to less than a third of those currently assumed to be doing so. The State Board does not know how many divert water without permits." In recent years there

has been a surge in water rights and reporting litigation, much of it focused on diversions from the Delta watershed.

AB 900 does not address all the solutions proposed by the Delta Vision Strategic Plan relating to monitor and report requirements and the SWRCB. The Plan also recommends that:

- All exemptions to report and record requirements be repealed
- SWRCB require recording and reporting by all water diverters statewide
- SWRCB assess monetary penalties for all monitoring and reporting violation
- SWRCB create adequate penalties for unauthorized diversions and violations
- SWRCB implement an electronic record and report system
- SWRCB require regular and systematic reporting on groundwater

In essence, the strategic plan emphasized repeal of Delta exemptions and advocated broader water use reporting across the board. AB 900 repeals the under-50-cfs exemption only for the Delta, which may raise concerns about that exemption's application to other areas. Due to the unique nature of the Delta, many diversions are smaller than 50 cfs so reporting cumulative totals may be important. Similarly, however, in some small streams in other areas, the 50-cfs exemption may exclude significant, but small, diversions that may harm fishery resources. The Committee may consider whether to change this repeal into a lowering of the minimum threshold to 5 or 10 cfs, while authorizing SWRCB or the Department of Fish and Game (DFG) to require reporting at lower thresholds where conditions demonstrate a need for such reporting.

The previous version of this bill, AB 2938 (DeLeón/2008), had two major components. The bill would have required DFG to design and implement a fish entrainment, water diversion, and water discharge monitoring program to evaluate the potential effects that diversions of water from the Sacramento-San Joaquin River Delta may have on fish species residing in or migrating through the Delta. Like AB 900, AB 2938 also deleted the reporting exemption for in-Delta consumptive use diversions and required monthly reporting for all surface water diversions within the Delta. AB 2938 passed in the assembly 61-3, but died in Senate Appropriations.

#### REGISTERED SUPPORT / OPPOSITION:

##### Support

Metropolitan Water District of Southern California (Sponsor)  
Association of California Water Agencies (ACWA)  
Desert Water Agency  
East Valley Water District  
Eastern Municipal Water District  
Friant Water Authority  
Valley Ag Water Coalition  
Santa Clara Valley Water District  
Three Valleys Municipal Water District

Opposition: None submitted

Analysis Prepared by: Alf W. Brandt and Lindsey Scott-Flórez / W., P. & W. / (916) 319-2096

Date of Hearing: April 14, 2009

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE

Jared William Huffman, Chair

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SUBJECT: Water diversion: statements of water diversion and use.

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EXISTING LAW exempts surface water diversions of less than 50 cfs, or diversions by siphons from the tidal zone of the Delta from requirements for measurement and reporting to SWRCB. Delta diversions are also exempt if consumptive use data for the Delta lowlands is published by DWR in its hydrologic data bulletins.

FISCAL EFFECT: Unknown

COMMENTS: This bill would require all in-Delta diverters to record and report all diversions, regardless of method or volume of their diversion, to SWRCB beginning January 1, 2011. Historically, Delta diversions were exempt from water diversion reporting requirements, which date back to 1965, due to the distinct nature of Delta diversions. As discussion of the need for greater information on water diversions, particularly within the Delta's watershed, has developed, the need for information on all diversions has become apparent. The conflict over state and federal water project (CVP/SWP) diversions intensified demand that all Delta diversions be monitored. In October 2008, the Delta Vision Strategic Plan (Plan), issued by the Delta Vision Blue Ribbon Task Force (Task Force), confirmed that need, noted the uncertainty of Delta decisionmaking without accurate reporting, and recommended repeal of the Delta's reporting exemptions. The cabinet-level Delta Vision Committee concurred in that recommendation.

AB 900 would repeal the portion of AB 1404 (Laird) from 2007 that exempts in-Delta diverters from reporting requirements and require those diverters to begin monitoring and reporting as soon as January 2011, rather than 2012 for other diverters. AB 1404 exempted in-Delta users from post-2012 requirements to provide monthly reports of water diversions. The lack of any reporting on in-Delta diversions (other than CVP/SWP diversions) leads to a lack of information on the quantity and timing of diversions within the region. By contrast, the CVP/SWP diversions are tracked with precision. The December 2007 Delta Vision report estimates that in-Delta diversions represent between 4 and 5 percent of total Delta inflow, compared to about 17% for Delta exports. The Task Force's 2008 report stated "the State Board has issued permits for the diversion of water from the Delta to less than a third of those currently assumed to be doing so. The State Board does not know how many divert water without permits." In recent years there

has been a surge in water rights and reporting litigation, much of it focused on diversions from the Delta watershed.

AB 900 does not address all the solutions proposed by the Delta Vision Strategic Plan relating to monitor and report requirements and the SWRCB. The Plan also recommends that:

- All exemptions to report and record requirements be repealed
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- SWRCB assess monetary penalties for all monitoring and reporting violation
- SWRCB create adequate penalties for unauthorized diversions and violations
- SWRCB implement an electronic record and report system
- SWRCB require regular and systematic reporting on groundwater

In essence, the strategic plan emphasized repeal of Delta exemptions and advocated broader water use reporting across the board. AB 900 repeals the under-50-cfs exemption only for the Delta, which may raise concerns about that exemption's application to other areas. Due to the unique nature of the Delta, many diversions are smaller than 50 cfs so reporting cumulative totals may be important. Similarly, however, in some small streams in other areas, the 50-cfs exemption may exclude significant, but small, diversions that may harm fishery resources. The Committee may consider whether to change this repeal into a lowering of the minimum threshold to 5 or 10 cfs, while authorizing SWRCB or the Department of Fish and Game (DFG) to require reporting at lower thresholds where conditions demonstrate a need for such reporting.

The previous version of this bill, AB 2938 (DeLeón/2008), had two major components. The bill would have required DFG to design and implement a fish entrainment, water diversion, and water discharge monitoring program to evaluate the potential effects that diversions of water from the Sacramento-San Joaquin River Delta may have on fish species residing in or migrating through the Delta. Like AB 900, AB 2938 also deleted the reporting exemption for in-Delta consumptive use diversions and required monthly reporting for all surface water diversions within the Delta. AB 2938 passed in the assembly 61-3, but died in Senate Appropriations.

#### REGISTERED SUPPORT / OPPOSITION:

##### Support

Metropolitan Water District of Southern California (Sponsor)  
Association of California Water Agencies (ACWA)  
Desert Water Agency  
East Valley Water District  
Eastern Municipal Water District  
Friant Water Authority  
Valley Ag Water Coalition  
Santa Clara Valley Water District  
Three Valleys Municipal Water District

Opposition: None submitted

Analysis Prepared by: Alf W. Brandt and Lindsey Scott-Florez / W., P. & W. / (916) 319-2096

**Senate Appropriations Committee Fiscal Summary**  
**Senator Christine Kehoe, Chair**

**AB 900 (De Leon)**

**Hearing Date:** 08/17/2009

**Amended:** 08/17/2009

**Consultant:** Brendan McCarthy

**Policy Vote:** NR&W 8-1

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**BILL SUMMARY:** This bill revises the existing requirements mandating that certain diverters of surface waters report their diversions to the State Water Board. In particular, this bill requires diversions in the Delta to be reported to the State Water Board.

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<b>Fiscal Impact (in thousands)</b>				
<b><u>Major Provisions</u></b>	<b><u>2009-10</u></b>	<b><u>2010-11</u></b>	<b><u>2011-12</u></b>	<b><u>Fund</u></b>
Adopting emergency regulations	\$65			General
Processing water diversion statements		\$470	\$470	General

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**STAFF COMMENTS:** This bill meets the criteria for referral to the Suspense file.

Under current law, persons who divert surface waters in the state are required to file a statement of diversion and use with the State Water Resources Control Board. There are several exemptions from this requirement in statute, under which persons who divert from a spring located on their property, persons covered by an existing application to divert water, and persons located in the Sacramento-San Joaquin River Delta, are not required to file statements. Current law also requires permit and license holders to report annual water use as a condition of the permit or license.

Under current law, beginning in 2012, statements of diversion are required to include information on monthly diversion rates, with the exception of diversions with a capacity of less than 50 cubic feet per second and diversions using siphons in the tidal zone of the Delta.

This bill revises the list of water diversions that are exempt from reporting requirements. Under the bill, reportable diversions include:

- diversions from a spring that does not flow off a property if the diversion is more than 25 acre-feet per year;
- diversions covered by an application on file with the Water Board;
- diversions from the Delta with a capacity of 10 gallons per minute or more.

In addition, the bill revises the rules regarding the monthly reporting of diversion amounts by eliminating the exemption for diversions in the Delta.

The bill authorizes the State Water Board to impose civil penalties if diverters fail to file required statements, tamper with a monitoring device, or make material misstatements in connection with the filing of a statement of diversion and use.

The bill authorizes the State Water Board and the Department of Water Resources to adopt emergency regulations to allow for electronic reporting of specified water use information.

The State Water Board indicates that there are a very significant number of diversions in the Delta that are not currently reported to the Board. The Board indicates that there will be significant workload associated with processing the initial diversion statements from those diversions. The Water Board does not charge a fee for filing a statement of diversion and use and this bill does not impose such a fee. The Water Rights Division of the State Water Board is funded from the Water Rights Fund and the General Fund. Because filers of statements of diversion do not contribute to the Water Rights Fund, it may not be legally appropriate to use those funds to pay for the costs of implementing this bill.

**Senate Appropriations Committee Fiscal Summary**  
**Senator Christine Kehoe, Chair**

**AB 900 (De Leon)**

**Hearing Date:** 08/27/2009

**Amended:** 08/17/2009

**Consultant:** Brendan McCarthy

**Policy Vote:** NR&W 8-1

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**BILL SUMMARY:** This bill revises the existing requirements mandating that certain diverters of surface waters report their diversions to the State Water Board. In particular, this bill requires diversions in the Delta to be reported to the State Water Board.

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<b>Fiscal Impact (in thousands)</b>				
<b><u>Major Provisions</u></b>	<b><u>2009-10</u></b>	<b><u>2010-11</u></b>	<b><u>2011-12</u></b>	<b><u>Fund</u></b>
Adopting emergency regulations	\$65			General
Processing water diversion statements		\$470	\$470	General
Fee revenues		(\$120)	(\$120)	Special *

\* Water Rights Fund

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**STAFF COMMENTS: Suspense file. As proposed to be amended.**

Under current law, persons who divert surface waters in the state are required to file a statement of diversion and use with the State Water Resources Control Board. There are several exemptions from this requirement in statute, under which persons who divert from a spring located on their property, persons covered by an existing application to divert water, and persons located in the Sacramento-San Joaquin River Delta, are not required to file statements. Current law also requires permit and license holders to report annual water use as a condition of the permit or license.

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- diversions from a spring that does not flow off a property if the diversion is more than 25 acre-feet per year;
- diversions covered by an application on file with the Water Board;
- diversions from the Delta with a capacity of 10 gallons per minute or more.



In addition, the bill revises the rules regarding the monthly reporting of diversion amounts by eliminating the exemption for diversions in the Delta.

The bill authorizes the State Water Board to impose civil penalties if diverters fail to file required statements, tamper with a monitoring device, or make material misstatements in connection with the filing of a statement of diversion and use.

The bill authorizes the State Water Board and the Department of Water Resources to adopt emergency regulations to allow for electronic reporting of specified water use information.

The State Water Board indicates that there are a very significant number of diversions in the Delta that are not currently reported to the Board. The Board indicates that there will be significant workload associated with processing the initial diversion statements from those diversions. The Water Board does not charge a fee for filing a statement of diversion and use and this bill does not impose such a fee. The Water Rights Division of the State Water Board is funded from the Water Rights Fund and the General Fund. Because filers of statements of diversion do not contribute to the Water Rights Fund, it may not be legally appropriate to use those funds to pay for the costs of implementing this bill.

**The proposed author's amendments** would impose a one-time fee, not to exceed \$150, to be paid the first time that diverters file statements of diversion and use.

Date of Hearing: May 6, 2009

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Kevin De Leon, Chair

AB 900 (De Leon) – As Amended: April 28, 2009

Policy Committee: Water, Parks and Wildlife

Vote: 13-0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY

This bill requires an in-Delta water user to monitor and report his or her water diversion to the State Water Resources Control Board (SWRCB). Specifically, this bill:

- 1) Requires, as of January 1, 2011, a person who diverts surface water from the legal Sacramento-San Joaquin Delta to report those diversions to SWRCB every three years.
- 2) Exempts from these reporting requirements diversions sources that have a capacity of less than 10 gallons per minute.

FISCAL EFFECT

- 1) Costs in 2011-12 and 2012-13, ranging from roughly \$275,000 to \$525,000 and requiring seven staff members, to receive, validate, and record 800 to 1,600 new water diversion filings. (GF or Water Rights Fund)
- 2) Minor annual costs of less than \$50,000, beginning in 2013-14, receive, file and maintain diversion filings. (GF or Water Rights Fund)

COMMENTS

- 1) Rationale. Competing agricultural, urban, and environmental demands constrain the use of Delta water. For example, a federal judge recently reduced water export pumping from the Delta in response to declining fish populations. Such constraints highlight the need to better manage Delta water use.

In December 2007, the Delta Vision Blue Ribbon Task Force—a commission created by the governor to advise on Delta management—estimated that in-Delta water diversions represent between 4%-5% of total Delta water diversions. However, and in contrast to diversions made as part of the Central Valley Project and the State Water Project, in-Delta water diversions are exempt from water diversion reporting requirements. This exemption has lead to a lack of information on the quantity and timing of in-Delta water diversions, a situation that interferes with effective management of the Delta. To remedy this situation, the Task Force has recommended, among other things, repealing Delta diversion reporting exemptions. This bill, sponsored by the Metropolitan Water District, is consistent with that recommendation.

## ASSEMBLY THIRD READING

AB 900 (De Leon)

As Amended April 28, 2009

Majority vote

WATER, PARKS & WILDLIFE	13-0	APPROPRIATIONS	17-0
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Ayes: Huffman, Fuller, Anderson, Chesbro,  
Tom Berryhill, Blumenfield,  
Caballero, Fletcher, Krekorian,  
Bonnie Lowenthal, John A. Perez,  
Salas, Yamada

Ayes: De Leon, Nielsen, Ammiano,  
Charles Calderon, Davis, Duvall,  
Fuentes, Hall, Harkey, Miller,  
John A. Perez, Price, Skinner, Solorio,  
Audra Strickland, Torlakson,  
Krekorian

SUMMARY: Requires measurement and reporting of water diversions within the Sacramento-San Joaquin Delta (Delta) to the State Water Resources Control Board (SWRCB). Specifically, this bill:

- 1) Repeals the exemption from water reporting requirements for "consumptive use data for the delta lowlands" published by the Department of Water Resources (DWR).
- 2) Reduces threshold requiring reporting of diversions within the legal Delta from 50 cubic feet per second (cfs) to 10 gallons per minute, commencing January 1, 2011.

EXISTING LAW exempts surface water diversions of less than 50 cfs, or diversions by siphons from the tidal zone of the Delta from requirements for measurement and reporting to SWRCB. Delta diversions are also exempt if consumptive use data for the Delta lowlands is published by DWR in its hydrologic data bulletins.

FISCAL EFFECT: According to the Assembly Appropriations Committee, estimated annual start-up costs in 2011-12 and 2012-13, ranging from roughly \$275,000 to \$525,000, and minor annual, on-going costs of less than \$50,000, thereafter.

COMMENTS: This bill would require all in-Delta diverters to record and report all diversions, regardless of method or volume of their diversion, to SWRCB beginning January 1, 2011. Historically, Delta diversions were exempt from water diversion reporting requirements, which date back to 1965, due to the distinct nature of Delta diversions. As discussion of the need for greater information on water diversions, particularly within the Delta's watershed, has developed, the need for information on all diversions has become apparent. The conflict over state and federal water project (CVP/SWP) diversions intensified demand that all Delta diversions be monitored. In October 2008, the Delta Vision Strategic Plan (Plan), issued by the Delta Vision Blue Ribbon Task Force (Task Force), confirmed that need, noted the uncertainty of Delta decision-making without accurate reporting, and recommended repeal of the Delta's reporting exemptions. The cabinet-level Delta Vision Committee concurred in that recommendation.

AB 900 would repeal the portion of AB 1404 (Laird) from 2007 that exempts in-Delta diverters from reporting requirements and require those diverters to begin monitoring and reporting as soon as January 2011, rather than 2012 for other diverters. AB 1404 exempted in-Delta users from post-2012 requirements to provide monthly reports of water diversions. The lack of any

reporting on in-Delta diversions (other than CVP/SWP diversions) leads to a lack of information on the quantity and timing of diversions within the region. By contrast, the CVP/SWP diversions are tracked with precision. The December 2007 Delta Vision report estimates that in-Delta diversions represent between 4 and 5% of total Delta inflow, compared to about 17% for Delta exports. The Task Force's 2008 report stated "the State Board has issued permits for the diversion of water from the Delta to less than a third of those currently assumed to be doing so. The State Board does not know how many divert water without permits." In recent years there has been a surge in water rights and reporting litigation, much of it focused on diversions from the Delta watershed.

AB 900 is one of a package of Assembly bills that implement the Delta Vision Strategic Plan. The others include: AB 13 (Salas/Delta Conservancy), AB 39 (Huffman/Delta Plan), and AB 49 (Feuer/Water Conservation). While this bill does not address all the solutions proposed by the Delta Vision Strategic Plan relating to monitoring and reporting requirements and the SWRCB, it takes critical steps in that direction. The Plan also recommends that:

- All exemptions to report and record requirements be repealed
- SWRCB require recording and reporting by all water diverters statewide
- SWRCB assess monetary penalties for all monitoring and reporting violation
- SWRCB create adequate penalties for unauthorized diversions and violations
- SWRCB implement an electronic record and report system
- SWRCB require regular and systematic reporting on groundwater

In essence, the strategic plan emphasized repeal of all Delta exemptions and advocated broader water use reporting across the board. AB 900 reduces the under-50-cubic feet per second (cfs) exemption to 10 gallons-per-minute, but only for the Delta, which may raise concerns about that exemption's application to other areas. Due to the unique nature of the Delta, many diversions are smaller than 50 cfs so reporting cumulative totals may be important. Similarly, however, in some small streams in other areas, the 50-cfs exemption may exclude significant, but small, diversions that may harm fishery resources.

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

FN: 0001208

**SENATE COMMITTEE ON NATURAL RESOURCES AND WATER**

**Senator Fran Pavley, Chair  
2009-2010 Regular Session**

**BILL NO:** AB 900

**AUTHOR:** De Leon

**VERSION:** June 30, 2009

**DUAL REFERRAL:** No

**SUBJECT:** Water diversion and use: reporting.

**HEARING DATE:** July 6, 2009

**URGENCY:** No

**CONSULTANT:** Dennis O'Connor

**FISCAL:** Yes

**BACKGROUND AND EXISTING LAW**

1. Existing law requires each person who diverts water after December 31, 1965 to file with the State Water Resources Control Board (SWRCB) a statement of diversion and use before July 1 of the succeeding year, with certain exceptions. These exceptions include:
  - Diversions from a spring that does not flow off the property on which it is located.
  - Diversions covered by an application, permit or license to appropriate water on file with the board.
  - Diversions regulated by a watermaster appointed by the department.
  - Diversions reported by the department in its hydrologic data bulletins.
  - Diversions included in the consumptive use data for the delta lowlands published by the department in its hydrologic data bulletins.
  - For use in compliance with the provisions relating to stock ponds.

The SWRCB separately requires permit and license holders to report annual use as a condition of the permit or license.

2. Current law requires statements of diversions and use to include specific information related to the name of the stream or source of water, the location of the diversion, the capacity of the diversion facilities, etc.

Beginning January 1, 2012, the statements of diversion and use are also to include monthly records of water diversions. However, the following are exempt from having to report monthly diversions:

- Surface water diversion with a combined diversion capacity less than 50 cubic feet per second.
  - Diverters using siphons in the "tidal zone"; "tidal zone" being defined as those portions of the Sacramento-San Joaquin Delta that are ordinarily subject to tidal action.
3. Also under existing law, it is a misdemeanor to make a willful misstatement regarding statements of diversion or use and any person who makes a material misstatement under these provisions may be civilly liable.
  4. Under existing law, statements filed pursuant to these provisions are for informational purposes only, and, except as noted above, neither the failure to file a statement nor any error in the information filed have any legal consequences.

## **PROPOSED LAW**

This bill would:

1. Revise the types of water diversions for which the reporting requirement does not apply, as follows:
  - Diversions from a spring that does not flow off the property on which it is located would be exempt only if that diversion is 25 acre-feet or less. Diversions over 25 acre-feet would no longer be exempt.
  - Diversions covered by an application on file with the board would no longer be exempt.
  - Diversions covered by a registration for small domestic or livestock stock pond uses would become exempt.
  - Diversions from the Sacramento-San Joaquin Delta that have a combined diversion capacity of less than 10 gallons per minute would become exempt.

Obsolete exceptions to filing statements of annual diversion or use for diversions reported by DWR in its hydrologic data bulletins or included in the consumptive use data for the delta lowlands published by DWR in its hydrologic data bulletins would also be eliminated.

2. Revise the exceptions to the monthly record requirement as follows:
  - Surface water diversion would be exempt only if the combined diversion capacity less than 10 gallons per minute. Diversions between 10 gallons per minute and 50 cubic feet per second would no longer be exempt
  - Diverters using siphons in the “tidal zone” would no longer be exempt.

Details relating to the required contents of the statement of diversions and use would also be revised.

3. Subject a person to civil liability if that person fails to file, as required, a diversion and use statement for a diversion or use that occurs after January 1, 2009, tampers with any measuring device, or makes a material misstatement in connection with the filing of a diversion and use statement.
4. Authorize the SWRCB to impose the civil liability in accordance with a specified schedule.
5. Authorize the SWRCB and DWR to adopt emergency regulations for the filing of reports of water diversion or use that are required to be filed by those respective state agencies under specified statutory provisions.
6. The bill would make additional conforming changes and would set forth related legislative findings and declarations.

## **ARGUMENTS IN SUPPORT**

Supporters point out that existing law exempts from reporting a narrow class of diverters residing in the Delta. They assert that these in-Delta diverters collectively divert more water than is exported to Southern California in an average year. Without information on all significant diversions in the Delta, efforts to better manage the struggling ecosystem will continue to fail. Requiring Delta diverters to monitor and report the volume and timing of their diversions will help agencies better understand and assess various stressors on the fragile ecosystem.

## **ARGUMENTS IN OPPOSITION:**

None

## **COMMENTS**

10 GPM Exclusion: The bill would exclude from the reporting requirements “A surface water diversion from the Sacramento-San Joaquin Delta ... that has a combined diversion capacity of less than 10 gallons per minute. This raises two questions

- **Why So Small?** When the faucet is fully open, the typical garden hose flows at about 10 gallons per minute. It is hard to believe that there are many, if any, diversions with so small a capacity. It probably does make sense to exclude very small diverters from the reporting requirements of diversion and use. It is not clear what the appropriate threshold for reporting should be. This would require additional research and discussions with the SWRCB. What is clear is threshold established under this bill is so small as to be nearly meaningless.
- **Why Only For Delta?** If it does make sense to exclude very small diverters from the reporting requirements of diversion and use, it probably makes sense statewide.

More Filings Mean More Work Means More Costs. The SWRCB estimates that only a small percentage of diverters that are required to file Statements of Diversion and Use, actually file a statement. Making a person subject to civil liability for failing to file will likely increase the number of filings significantly. More filings is a good thing. However, this in turn will result in additional work for the SWRCB. The SWRCB does not charge a fee for filing the reports. Somehow, the additional workload costs would need to be covered.

The bill does authorize the SWRCB to develop emergency regulations to provide for electronic filing of those reports. Electronic filing should reduce the cost of processing each individual statements of diversions and use. However, the bill provides neither a funding source for the SWRCB’s efforts to develop those regulations nor funding for the computer system to accept and appropriately process those electronic filing.

## **SUGGESTED AMENDMENTS:**

**AMENDMENT 1:** On page 5, strike out lines 19 to 21 inclusive and insert:  
(e) A surface water diversion that has a combined diversion capacity of less than \_\_\_\_.

**AMENDMENT 2:** On page 7, line 9, strike out “10 gallons per minute” and insert:  
\_\_\_\_\_



**SUPPORT (4/28/09 version)**

Metropolitan Water District of Southern California (Sponsor)  
Modesto Irrigation District (Sponsor)  
Association of California Water Agencies  
California State Grange  
City of Corona  
Desert Water Agency  
East Valley Water District  
Eastern Municipal Water District  
Friant Water Authority  
Glen Colusa Irrigation District  
Inland Empire Utilities Agency  
Los Angeles Business Council  
San Diego County Water Authority  
San Fernando Chamber of Commerce  
San Gabriel Valley Economic Partnership  
Santa Ana Watershed Project Authority  
Santa Clara Valley Water District  
Simi Valley Chamber of Commerce  
Three Valleys Municipal Water District  
Turlock Irrigation District  
Valley Ag Water Coalition  
Valley Industry and Commerce Association  
Western Municipal Water District

**OPPOSITION**

None Received

**SENATE RULES COMMITTEE**

AB 900

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

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THIRD READING

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Bill No: AB 900

Author: De Leon (D), et al

Amended: 8/17/09 in Senate

Vote: 21

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SENATE NATURAL RES. & WATER COMMITTEE: 8-1, 07/06/09

AYES: Pavley, Benoit, Huff, Kehoe, Leno, Padilla, Simitian, Wiggins

NOES: Hollingsworth

NO VOTE RECORDED: Cogdill, Wolk

SENATE APPROPRIATIONS COMMITTEE: 13-0, 08/17/09

AYES: Kehoe, Cox, Corbett, Denham, Hancock, Leno, Oropeza, Price,  
Runner, Walters, Wolk, Wyland, Yee

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**SUBJECT:** Water diversion

**SOURCE:** Metropolitan Water District of Southern California  
Modesto Irrigation District

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**DIGEST:** This bill revises the existing requirements mandating that certain diverters of surface waters report their diversions to the State Water Board. This bill requires diversions in the Delta to be reported to the State Water Board.

**ANALYSIS:** Under current law, persons who divert surface waters in the state are required to file a statement of diversion and use with the State Water Resources Control Board. There are several exemptions from this requirement in statute, under which persons who divert from a spring located on their property, persons covered by an existing application to divert water, and persons located in the Sacramento-San Joaquin River Delta, are not

CONTINUED

required to file statements. Current law also requires permit and license holders to report annual water use as a condition of the permit or license.

Under current law, beginning in 2012, statements of diversion are required to include information on monthly diversion rates, with the exception of diversions with a capacity of less than 50 cubic feet per second and diversions using siphons in the tidal zone of the Delta.

This bill revises the list of water diversions that are exempt from reporting requirements. Under the bill, reportable diversions include:

1. Diversions from a spring that does not flow off a property if the diversion is more than 25 acre-feet per year;
2. Diversions covered by an application on file with the Water Board;
3. Diversions from the Delta with a capacity of 10 gallons per minute or more.

In addition, the bill revises the rules regarding the monthly reporting of diversion amounts by eliminating the exemption for diversions in the Delta.

The bill authorizes the State Water Board to impose civil penalties if diverters fail to file required statements, tamper with a monitoring device, or make material misstatements in connection with the filing of a statement of diversion and use.

The bill authorizes the State Water Board and the Department of Water Resources to adopt emergency regulations to allow for electronic reporting of specified water use information.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee analysis, the State Water Board indicates that there are a very significant number of diversions in the Delta that are not currently reported to the Board. The Board indicates that there will be significant workload associated with processing the initial diversion statements from those diversions. The Water Board does not charge a fee for filing a statement of diversion and use and this bill does not impose such a fee. The Water Rights Division of the State Water Board is funded from the Water Rights Fund and the General Fund. Because filers of

CONTINUED

statements of diversion do not contribute to the Water Rights Fund, it may not be legally appropriate to use those funds to pay for the costs of implementing this bill.

**SUPPORT:** (Verified 7/6/09)(reflects Senate Natural Resources and Water Committee analysis)

Metropolitan Water District of Southern California (co-source)

Modesto Irrigation District (co-source)

Association of California Water Agencies

California State Grange

City of Corona

Desert Water Agency

East Valley Water District

Eastern Municipal Water District

Friant Water Authority

Glen Colusa Irrigation District

Inland Empire Utilities Agency

Los Angeles Business Council

San Diego County Water Authority

San Fernando Chamber of Commerce

San Gabriel Valley Economic Partnership

Santa Ana Watershed Project Authority

Santa Clara Valley Water District

Simi Valley Chamber of Commerce

Three Valleys Municipal Water District

Turlock Irrigation District

Valley Ag Water Coalition

Valley Industry and Commerce Association

Western Municipal Water District

DLW:nl 9/11/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

# Preprint SB 2 (SB 229 content) by Senator Pavley

## Summary and Comments

**Summary:** Preprint Senate Bill No. 2 (PSB 2) would revise existing water use reporting and water rights enforcement and would establish a statewide groundwater elevation monitoring program

Specifically, this proposal would:

1) Increase Consequences for Not Reporting Water Diversions or Use:

- a) Add a provision that, in a proceeding before the State Water Resources Control Board (SWRCB) in which (1) it is alleged that an appropriative right water has ceased or is subject to forfeiture or revocation for nonuse, (2) SWRCB had imposed a requirement that the diversion or use required to be reported, and (3) that diversion or use was not reported to SWRCB, that diversions or use would be deemed not to occur. This provision would not apply to any diversion or use that occurred before January 1, 2009.
- b) Add a provision that, in any proceeding before SWRCB in which (1) it is alleged that an appropriative right has ceased or is subject to forfeiture or revocation for nonuse, (2) that diversion or use was not included in a statement of diversion or use as required by statute or (3) that required statement was submitted six months or later after it was required to be filed with SWRCB, there would be a rebuttable presumption that no use occurred. This provision would not apply to any diversion or use that occurred before January 1, 2009.
- c) Raise the current additional penalty for unauthorized diversions from 100% of the amount of fees that would have been collected had that diversion been reported to 150% of that amount.
- d) Authorize an additional penalty for failing to file, or material statements in, statements of diversion and use of 150% of the amount of fees that would have been collected had those reports been filed.
- e) Add a new penalty that, any person or entity subject to a monitoring or reporting requirement who (1) violates that reporting or monitoring requirement, (2) makes a material misstatement in any record or report submitted under that reporting or monitoring requirement, or (3) tampers with or renders inaccurate any monitoring device required under that reporting or monitoring requirement, would be liable for a sum not to exceed five hundred dollars (\$500) for each day in which the violation occurs.

2) New and Increased Penalties for Violating Water Rights Laws:

- a) Change the penalties for unauthorized diversion or use from not more than \$500 per day of violation to not more than the sum of:
  - i) \$1,000 per day of violation
  - ii) \$1,000 per acre foot diverted in violation

- b) Change the penalties for violating a cease and desist order from not more than \$1,000 per day of violation to not more than the sum of:
  - i) \$2,500 per day of violation
  - ii) \$2,500 per acre foot diverted in violation
- c) Add a penalty, not to exceed \$500 per day of violation, for any violation of term or condition of a permit, license, certificate, or registration, or any order or regulation adopted by SWRCB under preventing waste or unreasonable use.
- d) Require SWRCB to adjust all maximum penalties for inflation as measured by the June to June change in the California CPI.

3) New and Increased Enforcement Authorities:

- a) Allow SWRCB, in any investigation regarding waste or unreasonable use, legality of appropriation, etc, to order any water diverter or water user to prepare technical or monitoring programs reports regarding the diversion or use, under penalty of perjury.
- b) Expand existing Legislative intent language to include that the state should also take vigorous enforcement actions to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, and to enforce reporting and monitoring requirements.
- c) Add the following to the list of actions that SWRCB can issue a cease and desist order:
  - i) violations of unreasonable use regulations.
  - ii) violations of reporting or monitoring requirements.

4) Additional Water Rights Fees

- a) Add to the list of filings subject to a filing fee:
  - i) Registrations for small domestic use or livestock stockpond use.
  - ii) Petitions to change the point of diversion, place of use, or purpose of use of a water right that is not subject to a permit or license to appropriate water.
  - iii) Statements of water diversion and use.

5) Authorize SWRCB to Initiate Statutory Adjudication

- a) Authorize SWRCB to initiate a determination of rights of the various claimants to the water of a stream system *under its own motion* if after a hearing it finds that the public interest and necessity will be served by a determination of the rights involved

6) Provide for Interim Relief

- a) Authorize SWRCB to issue an interim relief order in appropriate circumstances, after notice and an opportunity for a hearing, in proceedings to enforce all of the following:
  - i) Section 2 of Article X of the California Constitution, regarding prohibition of waste and unreasonable use.
  - ii) The public trust doctrine.
  - iii) Water quality objectives adopted under the Porter-Cologne Water Quality Act.
  - iv) Water rights requirements set forth in permits and licenses issued by SWRCB.

- v) Water rights requirements established in statute.
  - vi) Section 5937 of the Fish and Game Code, regarding to keep in good condition any fish that exist below a dam.
- b) Require SWRCB in determining whether to provide interim relief, and the nature and extent of the relief, to consider all relevant circumstances, including the effects on other legal users of water, fish, wildlife, and other instream beneficial uses, the extent of harm, the necessity for relief, and any appropriate measure to minimize any adverse effects of providing interim relief. Sufficient grounds would exist for interim relief upon the same showing as would be required for a superior court to grant a preliminary injunction.
  - c) Authorize SWRCB, as part of the interim relief order, to require the water diverter or user to do any of the following:
    - i) Cease all harmful practices.
    - ii) Employ specific procedures and operations to prevent or mitigate the harm.
    - iii) Complete technical and monitoring work and prepare and submit reports on that work, including draft environmental documentation.
    - iv) Participate in and provide funding for studies that SWRCB determines are reasonably necessary to evaluate the impact of the diversion or use that is the subject of the proceeding.
    - v) Reimburse SWRCB's expenses for the preparation of any necessary environmental documentation.
    - vi) Take other required action.
  - d) Except any interim relief order issued by SWRCB from CEQA if SWRCB makes specific findings.
  - e) Require the Attorney General, upon the request of SWRCB, to petition the superior court to issue a temporary restraining order, preliminary injunction, or permanent injunction should any water diverter or user fails to comply with any part of an interim relief order.
  - f) Add a provision that any person or entity who violates any interim relief order issued by SWRCB would be liable for a civil penalty of not more than five thousand dollars (\$5,000) for each day in which a violation occurs.
    - i) Civil liability could be imposed by the superior court. The Attorney General, upon request of SWRCB, would petition the superior court to impose the liability.
    - ii) Civil liability could be imposed administratively by SWRCB.
    - iii) In determining the appropriate amount, the court or SWRCB, as the case may be, shall consider all the relevant circumstances, including the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action undertaken by the violator.
- 7) Establish Statewide Groundwater Monitoring
- a) State Legislative intent that by January 1, 2012, groundwater elevations in all groundwater basins and subbasins be regularly and systematically monitored locally and that the resulting groundwater information be made readily and widely available.



- b) Require local groundwater management interests to notify DWR as to who would conduct the monitoring of groundwater elevations, what area they would monitor, their qualifications for conducting the monitoring, etc.
- c) Require DWR, in situations where more than one party seeks to become the monitoring entity for the same portion of a basin or subbasin, to consult with the interested parties to determine who would perform the monitoring functions. In determining which party would conduct the monitoring, DWR would be required to adhere to the following priority:
  - i) A watermaster or water management engineer who was appointed by a court as a part of an adjudication proceeding.
  - ii) Either (a) a groundwater management agency with statutory authority to manage groundwater pursuant to its implementing legislation, or (b) a water replenishment district.
  - iii) Either (a) A local agency that is managing all or part of a groundwater basin or subbasin under what is known as an AB 3030 plan (Water Code Section 10750 et seq.), or (b) A local agency or county that is managing all or part of a groundwater basin pursuant to any other legally enforceable groundwater management plan with provisions that are substantively similar to AB 3030.
  - iv) A local agency that is managing all or part of a groundwater basin or subbasin pursuant to an integrated regional water management plan that includes a groundwater management component that complies with the requirements of SB 1938 (Water Code Section 10753.7).
  - v) A county that is not currently managing all or a part of a groundwater basin.
  - vi) A voluntary cooperative groundwater monitoring association.
- d) Require monitoring entities to start monitoring and reporting groundwater elevations by January 1, 2012. The groundwater elevation data would be made readily available to DWR, interested parties, and the public.
- e) Require DWR, by January 1, 2012, to identify the extent of monitoring of groundwater elevations that is being undertaken within each basin and subbasin. If DWR determines that no one is monitoring all or part of a basin or subbasin, DWR would be required to determine if there was a local party willing to conduct the monitoring.
- f) If (a) DWR determines there is no local interest in conducting the monitoring, and (b) DWR determines the existing monitoring network is insufficient to demonstrate seasonal and long term trends in groundwater elevations, and (c) Board of Mining and Geology concurs with that determination; then DWR would be authorized to monitor groundwater elevations and to assess a fee to well owners within the DWR monitored area to recover its direct costs.
- g) Require DWR to update the groundwater report by January 1, 2012, and thereafter in years ending in 5 and 0.
- 8) Provide for other miscellaneous issues
  - a) Technical amendments to ensure all water rights holders, including cities, counties, & special districts, are required to pay filing fees.
  - b) Technical amendments to ensure board can enforce the new filing requirements.

## *Comments*

### **A. Water Diversion and Use: Reporting**

- **Failing to File.** This proposal would significantly increase the consequences of not filing required reports on diversion and use, in order to increase compliance with existing reporting requirements under statute and board regulations and orders. State law has required such reports for decades, but many diverters do not comply, because penalties for non-compliance are minimal. In short, it may make more economic sense to pay a small fine – if the violator is ever discovered – than file the required reports.

The Delta Vision Strategic Plan, while not speaking directly on increased consequences for failing to file required reports, did say: *“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.”*

This proposal adds provisions regarding failing to file required diversion and use reports. However, the consequences are different depending on whether the requirements are statutory or imposed by SWRCB. In the case of statutorily required reports, failure to file would create a rebuttable presumption that the diversion or use did not occur. That is, the person or persons who did not file the required reports would be allowed to prove that such diversion or use did occur, but the burden of proof would be upon them. However, if the requirement was imposed by SWRCB as a condition of a water rights permit, as an example, the failure to file would be deemed non-use. Under existing water law, such non-use can result in loss of the right, under certain circumstances. The Conference Committee might wish to consider whether having two different consequences for the two different circumstances is appropriate.

The issue of better information on diversion and use is also addressed in AB 900 (De Leon), albeit in a different though complementary way. AB 900 would eliminate a number of current exemptions from filing reports of diversion and use. Currently, AB 900 and this proposal do not conflict. However, the Conference Committee may wish to consider reviewing the language for both proposals together to determine if PSB 2 would need additional technical amendments to further harmonize the two bills.

### **B. Water Rights: Enforcement**

- **Penalties and Enforcement:** This proposal would provide new and increased penalties for violating water rights law and would expand SWRCB’s authority to enforce water rights laws. In effect, these changes would level the playing field to support better enforcement of water rights laws. These penalties have not been increased in decades and fail to reflect the economic value of compliance. In some cases, there is no penalty at all, such as violation of permit terms. While SWRCB may be able to issue a cease-and-desist order, such actions set a high bar for enforcement and fail to recover enforcement costs.

Delta Vision Committee Implementation Report (a.k.a. the Chrisman Report), dated December 31, 2008, while not commenting on this precise set of penalties and enforcement authorities, called for legislation “to enhance and expand the State Water Resources Control Board's water rights administrative accountability. These recommendations are not intended to adversely affect the current water right priority system, including area-of-origin priorities but rather to strengthen the current administrative system. Appropriate enforcement will protect existing water rights.” It later stated that “many existing water right permit terms and conditions are not directly enforceable, and the law should be amended to correct this problem.” Despite the Administration's comment about enforcement protecting all water rights, some object to stronger enforcement. It is not clear whether these opponents are violators who wish to avoid enforcement.

- **Statutory Adjudication:** Currently, SWRCB is authorized to conduct stream adjudications upon petition. This proposal would further authorize SWRCB to conduct such adjudications upon its own motion, after conducting a hearing and finding that such an adjudication would be in the public interest. In some situations, when water rights holders seek to avoid any adjudication, the loser is the environment, which may have no advocate for clarifying water rights in the context of protecting the public trust. This provision would allow the SWRCB to identify such a problem and begin the clarification process on its own.

Delta Vision Committee Implementation Report observed “the Water Board needs to clarify existing water rights in many parts of the State in light of poorly defined or unreported riparian and appropriative water right claims and the unquantified needs of fish and wildlife. SWRCB needs the authority to initiate stream adjudications and collect adjudication costs from the parties diverting water. This process will respect area of origin rights.”

- **Interim Relief:** This proposal would authorize SWRCB to require interim remedies as specified. Interim remedies are designed to prevent or halt potentially permanent harm while allowing the full evidentiary process to continue. It protects due process and restores the status quo, so that adjudication of the conflict may proceed without further damage to the environment. It again levels the playing field for enforcement of water rights law. This provision is patterned after a preliminary injunction proceeding in court, where the court can stop "irreparable" damage while litigation proceeds. It also allows SWRCB to require a violator to pay the costs of developing sufficient information to resolve the conflict.

Delta Vision Committee Implementation Report states “The Water Board needs authority to require interim remedies, after opportunity for hearing, to prevent irreparable harm to the environment and other water right holders, while underlying proceedings continue. Interim remedies could include requiring the diverter to take appropriate action to mitigate potential harm or to provide necessary information. As with courts, Water Board evidentiary proceedings can take many years. Unlike courts, however, the Water Board currently has no authority to issue interim orders designed to prevent irreparable harm.”

### **C. Groundwater Monitoring**

- This proposal would establish a statewide groundwater monitoring program to ensure that groundwater elevations in all groundwater basins and subbasins be regularly and systematically monitored locally and that the resulting groundwater information be made readily and widely available.

As noted above, the Strategic Plan observed, “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.

In the past five years, the Legislature has approved three bills to improve the State's access to groundwater information, but the Governor vetoed all three. In the intervening years, groundwater problems have grown worse, largely because California is the last western state without any state groundwater management – and very little information about the conditions of the state's groundwater basins. Excessive pumping in the last century has led to substantial subsidence, as much as 55 feet in some areas. Recently, for example, on the Westside of the San Joaquin Valley, where allocations of Delta water from the federal Central Valley Project were minimal, farmers responded by pumping more groundwater. Reports then surfaced that the State Water Project's canal, which passes through the area on its way to Southern California, may suffer cracks because of the high level of pumping and resulting slumping of the ground under the canal.

#### Other Issues:

As the Conference Committee begins deliberating this proposal, it also may want to consider technical amendments to address the following:

- Provide parallel provisions to enforce riparian monitoring.
- Provide SWRCB authority to initiate rulemaking to specify monitoring reporting requirements such as frequency of reporting and form of reporting; e.g., regulations regarding electronic monitoring and reporting.

*The Assembly Water, Parks & Wildlife Committee and the Senate Natural Resources & Water Committee collaborated in preparing this analysis.*

## PREPRINT SENATE BILL No. 2

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**Proposed by Senator Pavley**

August 4, 2009

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An act to amend Sections 6103.1 and 6103.4 of the Government Code, and to amend Sections 1052, 1055, 1055.2, 1126, 1525, 1535, 1538, 1551, 1825, 1831, 1845, 2525, 2526, 2550, 2763.5, and 5106 of, to add Sections 1051.1, 1055.5, 1240.5, 1846, and 1847 to, to add Chapter 3.5 (commencing with Section 1110) to Part 1 of Division 2 of, to add Part 2.11 (commencing with Section 10920) to Division 6 of, and to repeal and add Section 12924 of, the Water Code, relating to water.

### LEGISLATIVE COUNSEL'S DIGEST

Preprint SB 2, as proposed, Pavley. Water: diversion and use: groundwater.

(1) Existing law generally provides that the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, may not be required to pay any fee for the performance of an official service. Existing law exempts from this provision any fee or charge for official services required pursuant to specified provisions of law relating to water use or water quality.

This bill would expand the exemption to other provisions relating to water use, including provisions that require the payment of fees to the State Water Resources Control Board (board) for official services relating to statements of water diversion and use.

(2) The California Constitution requires the reasonable and beneficial use of water. Under the public trust doctrine, the board, among other state agencies, is required to take the public trust into account in the planning and allocation of water resources and to protect the public



SB 2 2009

trust whenever feasible. The board and the California regional water quality control boards (regional boards) are required to set forth water quality objectives in state and regional water quality control plans. Existing law establishes the Water Rights Fund, which consists of various fees and penalties. The moneys in the Water Rights Fund are available, upon appropriation by the Legislature, for the administration of the board's water rights program.

This bill would authorize the board to issue, on its own motion or upon the petition of an interested party, an interim relief order in appropriate circumstances to implement or enforce these and related provisions of law. A person or entity that violates any interim relief order issued by the board would be liable to the board for a civil penalty in an amount not to exceed \$5,000 for each day in which a violation occurs. These funds would be deposited in the Water Rights Fund.

(3) Existing law authorizes the board to investigate all streams, stream systems, lakes, or other bodies of water, take testimony relating to the rights to water or the use of water, and ascertain whether water filed upon or attempted to be appropriated is appropriated under the laws of the state. Existing law requires the board to take appropriate actions to prevent waste or the unreasonable use of water. Under existing law, the board makes determinations with regard to the availability of recycled water.

This bill would authorize the board, in conducting an investigation or proceeding for these purposes, to order any person or entity that diverts water or uses water to submit, under penalty of perjury, any technical or monitoring report related to the diversion or use of water by that person or entity. By expanding the definition of the crime of perjury, the bill would impose a state-mandated local program. The bill would authorize the board, in connection with the investigation or proceeding, to inspect the facilities of any person or entity to determine compliance with specified water use requirements.

(4) Existing law authorizes the board, upon the submission of a petition signed by a claimant to water of any stream system requesting a determination of rights among the claimants to that water, to enter an order granting the petition. After granting the petition, the board is required to investigate the stream system to gather information necessary to make a determination of the water rights of that stream system.

This bill would authorize the board to initiate a determination of rights under its own motion if after a hearing it finds that the public interest and necessity will be served by a determination of rights.



(5) Existing law declares that the diversion or use of water other than as authorized by specified provisions of law is a trespass. Existing law authorizes the administrative imposition of civil liability by the board for a trespass in an amount not to exceed \$500 for each day in which the trespass occurs. Moneys generated by the imposition of civil liability under these provisions are deposited in the Water Rights Fund.

This bill would provide that a person or entity committing a trespass may be liable in an amount not to exceed the sum of \$1,000 for each day in which the trespass occurs and \$1,000 for each acre-foot of water diverted or used other than as authorized by those specified provisions of law.

(6) Existing law, with certain exceptions, requires each person who, after December 31, 1965, diverts water to file with the board a statement of diversion and use.

This bill would establish a rebuttable presumption, in any proceeding before the board in which it is alleged that an appropriative right has ceased or is subject to prescribed action, that no use required to be included in a statement of diversion and use occurred unless that use is included in a statement that is submitted to the board within a specified time period.

The bill would require a person who files a statement of diversion and use, and certain petitions involving a change in a water right, to pay an annual fee, for deposit in the Water Rights Fund. The bill would include as recoverable costs, for which the board may be reimbursed from the fund upon appropriation therefor, costs incurred in connection with carrying out requirements relating to the statements of diversion and use and the performance of duties under the public trust doctrine and provisions that require the reasonable use of water.

(7) Existing law authorizes the board to issue a cease and desist order against a person who is violating, or threatening to violate, certain requirements, including requirements set forth in a decision or order relating to the unauthorized use of water. Any person who violates a cease and desist order may be liable in an amount not to exceed \$1,000 for each day in which the violation occurs. Revenue generated from these penalties is deposited in the Water Rights Fund.

This bill would authorize the board to issue a cease and desist order in response to a violation of certain requirements relating to the unauthorized diversion or use of water or of a reporting or monitoring requirement established under a decision, order, or regulation adopted by the board pursuant to various provisions of law, including the public



trust doctrine. The bill would increase the civil penalties that apply to a person who violates a cease and desist order by subjecting a violator to a civil penalty in an amount not to exceed the sum of \$2,500 for each day in which the violation occurs and \$2,500 for each acre-foot of water diverted or used in violation of the cease and desist order.

The bill would impose civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for a failure to comply with various reporting or monitoring requirements, including requirements imposed pursuant to the public trust doctrine. The bill would authorize the board to impose additional civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for the violation of a permit, license, certificate, or registration, or an order or regulation involving the unreasonable use of water. Funds derived from the imposition of these civil penalties would be deposited in the Water Rights Fund.

The bill would require the board to adjust for inflation, by January 1 of each year, beginning in 2011, the amounts of civil and administrative liabilities or penalties imposed by the board in water right actions, as specified.

The bill would specify that, in a proceeding before the board in which it is alleged that an appropriative water right has ceased, or is subject to prescribed action, it shall be deemed that a diversion or use occurring on or after January 1, 2009, and required to be reported, as specified, did not occur unless that diversion or use was reported to the board.

(8) Existing law authorizes a local agency whose service area includes a groundwater basin that is not subject to groundwater management to adopt and implement a groundwater management plan pursuant to certain provisions of law. Existing law requires a groundwater management plan to include certain components to qualify as a plan for the purposes of those provisions, including a provision that establishes funding requirements for the construction of certain groundwater projects.

This bill would establish a groundwater monitoring program pursuant to which specified entities, in accordance with prescribed procedures, may propose to be designated by the Department of Water Resources as groundwater monitoring entities, as defined, for the purposes of monitoring and reporting with regard to groundwater elevations in all or part of a basin or subbasin, as defined. The bill would require the department to work cooperatively with each monitoring entity to determine the manner in which groundwater elevation information

should be reported to the department. The bill would authorize the department to make recommendations for improving an existing monitoring program, require additional monitoring wells under certain circumstances, and require the department, under prescribed circumstances, to perform groundwater monitoring functions for those portions of a basin or a subbasin for which no monitoring entity has agreed to perform those functions under this program.

(9) Existing law requires the department to conduct an investigation of the state's groundwater basins and to report its findings to the Governor and the Legislature not later than January 1, 1980.

This bill would repeal that provision. The department would be required to conduct an investigation of the state's groundwater basins and to report its findings to the Governor and the Legislature not later than January 1, 2012, and every 5 years thereafter.

(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(11) These provisions would only become operative if \_\_\_\_ of the 2009–10 Regular Session of the Legislature are enacted and become effective on or before January 1, 2010.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 6103.1 of the Government Code is  
2 amended to read:

3 6103.1. Section 6103 does not apply to any fee or charge for  
4 official services required by ~~Parts~~ *Part 1 (commencing with Section*  
5 *1000), Part 2 (commencing with Section 1200), Part 3*  
6 *(commencing with Section 2000), and Part 4 (commencing with*  
7 *Section 4000), Part 5 (commencing with Section 4999), or Part*  
8 *5.1 (commencing with Section 5100) of Division 2, or Division 7*  
9 *(commencing with Section 13000), of the Water Code.*

10 SEC. 2. Section 6103.4 of the Government Code is amended  
11 to read:

12 6103.4. Section 6103 does not apply to any fee or charge for  
13 official services required by Section 100860 of the Health and

1 Safety Code, or Part 5 (commencing with Section 4999) of Division  
2 2, or Division 7 (commencing with Section 13000), of the Water  
3 Code.

4 SEC. 3. Section 1051.1 is added to the Water Code, to read:

5 1051.1. (a) In conducting any investigation or proceeding  
6 specified in Sections 275 or 1051, or Article 7 (commencing with  
7 Section 13550) of Chapter 7 of Division 7, the board may order  
8 any person or entity that diverts or uses water to prepare, under  
9 penalty of perjury, and to submit to the board, any technical or  
10 monitoring program reports related to that person's or entity's  
11 diversion or use of water as the board may specify. The costs  
12 incurred by the person or entity in the preparation of those reports  
13 shall bear a reasonable relationship to the need for the report and  
14 the benefit to be obtained from the report. If the preparation of  
15 individual reports would result in a duplication of effort, or if the  
16 reports are necessary to evaluate the cumulative effect of several  
17 diversions or uses of water, the board may order any person or  
18 entity subject to this subdivision to pay a reasonable share of the  
19 cost of preparing reports.

20 (b) Any order issued under this section shall be served by  
21 personal service or registered mail on the party required to submit  
22 technical or monitoring program reports or to pay a share of the  
23 costs of preparing reports. Unless the board issues the order after  
24 a hearing, the order shall inform the party of the right to request a  
25 hearing within 30 days after the party has been served. If the party  
26 does not request a hearing within that 30-day period, the order  
27 shall take effect as issued. If the party requests a hearing within  
28 that 30-day period, the board may adopt a decision and order after  
29 conducting a hearing.

30 (c) Upon application of any person or entity or upon its own  
31 motion, the board may review and revise any order issued pursuant  
32 to this section, in accordance with the procedures set forth in  
33 subdivision (b).

34 (d) In conducting any investigation or proceeding specified in  
35 Sections 275 or 1051, or Article 7 (commencing with Section  
36 13550) of Chapter 7 of Division 7, the board may inspect the  
37 facilities of any person or entity to ascertain whether the purposes  
38 of Section 100 and this division are being met and to ascertain  
39 compliance with any permit, license, certification, registration,  
40 decision, order or regulation issued under Section 275, this division,

1 or Article 7 (commencing with Section 13550) of Chapter 7 of  
2 Division 7. Except in the event of an emergency affecting the  
3 public health or safety, the inspection shall be made with the  
4 consent of the owner or possessor of the facilities or, if the consent  
5 is withheld, with a warrant duly issued pursuant to the procedure  
6 set forth in Title 13 (commencing with Section 1822.50) of Part  
7 3 of the Code of Civil Procedure.

8 SEC. 4. Section 1052 of the Water Code is amended to read:

9 1052. (a) The diversion or use of water subject to this division  
10 other than as authorized in this division is a trespass.

11 ~~(b) Civil liability may be administratively imposed by the board~~  
12 ~~pursuant to Section 1055 for a trespass as defined in this section~~  
13 ~~in an amount not to exceed five hundred dollars (\$500) for each~~  
14 ~~day in which the trespass occurs.~~

15 ~~(e)~~

16 (b) The Attorney General, upon request of the board, shall  
17 institute in the superior court in and for any county ~~wherein in~~  
18 ~~which~~ the diversion or use is threatened, is occurring, or has  
19 occurred ~~appropriate an~~ action for the issuance of injunctive relief  
20 as may be warranted by way of temporary restraining order,  
21 preliminary injunction, or permanent injunction.

22 ~~(d)~~

23 (c) (1) Any person or entity committing a trespass as defined  
24 in this section may be liable ~~for a sum in an amount~~ not to exceed  
25 ~~five hundred dollars (\$500) for each day in which the trespass~~  
26 ~~occurs. The the sum of the following:~~

27 (A) *One thousand dollars (\$1,000) for each day in which the*  
28 *trespass occurs.*

29 (B) *One thousand dollars (\$1,000) for each acre-foot of water*  
30 *diverted or used other than as authorized in this division.*

31 (2) *Civil liability may be imposed by the superior court.*

32 The Attorney General, upon request of the board, shall petition  
33 the superior court to impose, assess, and recover any sums pursuant  
34 to this subdivision. In determining the appropriate amount, the  
35 court shall take into consideration all relevant circumstances,  
36 including, but not limited to, the extent of harm caused by the  
37 violation, the nature and persistence of the violation, the length of  
38 time over which the violation occurs, and the corrective action, if  
39 any, taken by the violator.

1 (3) *Civil liability may be imposed by the board pursuant to*  
2 *Section 1055.*

3 (e)

4 (d) All funds recovered pursuant to this section shall be  
5 deposited in the Water Rights Fund established pursuant to Section  
6 1550.

7 (f)

8 (e) The remedies prescribed in this section are cumulative and  
9 not alternative.

10 SEC. 5. Section 1055 of the Water Code is amended to read:

11 1055. (a) The executive director of the board may issue a  
12 complaint to any person or entity on which administrative civil  
13 liability may be imposed pursuant to Section 1052, ~~Section 1536,~~  
14 ~~Section 1845, or 1118, Article 4 (commencing with Section 1845)~~  
15 *of Chapter 12 of Part 2 of Division 2, or Section 5107.* The  
16 complaint shall allege the act or failure to act that constitutes a  
17 trespass or violation, the provision of law authorizing civil liability  
18 to be imposed, and the proposed civil liability.

19 (b) The complaint shall be served by personal notice or certified  
20 mail, and shall inform the party served that the party may request  
21 a hearing not later than 20 days from the date the party was served.  
22 The hearing shall be before *the board, or* a member of the board  
23 ~~as it may specify in accordance with Section 183.~~

24 ~~(e) After any hearing, the member shall report a proposed~~  
25 ~~decision and order to the board and shall supply a copy to the party~~  
26 ~~served with the complaint, the board's executive director, and any~~  
27 ~~other person requesting a copy. The member of the board acting~~  
28 ~~as hearing officer may sit as a member of the board in deciding~~  
29 ~~the matter. The board, after making an independent review of the~~  
30 ~~record and taking any additional evidence as may be necessary~~  
31 ~~that could not reasonably have been offered before the hearing~~  
32 ~~officer, may adopt, with or without revision, the proposed decision~~  
33 ~~and order.~~

34 (c) *The board may adopt an order setting administrative civil*  
35 *liability, or determining that no liability will be imposed, after any*  
36 *necessary hearing.*

37 (d) Orders setting administrative civil liability shall become  
38 effective and final upon issuance thereof and payment shall be  
39 made.

40 SEC. 6. Section 1055.2 of the Water Code is amended to read:

1 1055.2. No person or entity shall be subject to both civil  
2 liability imposed under Section 1055 and civil liability imposed  
3 by the superior court under ~~subdivision (d) of Section 1052, Section~~  
4 ~~1536 1118, or Section 1845, or Section 1846~~ for the same act or  
5 failure to act.

6 SEC. 7. Section 1055.5 is added to the Water Code, to read:

7 1055.5. (a) (1) The board shall adjust on an annual basis, by  
8 January 1 of each year beginning in 2011, all civil and  
9 administrative liabilities or penalties imposed by the board in an  
10 action brought at the request of the board pursuant this division,  
11 to adjust the maximum amounts specified in this division for  
12 inflation, as established by the amount by which the California  
13 Consumer Price Index for the month of June of the year prior to  
14 the adjustment exceeds the California Consumer Price Index for  
15 June of the calendar year in which legislation was last enacted  
16 establishing or amending the maximum amount of the liability or  
17 penalty.

18 (2) The amount of any liability or penalty determined pursuant  
19 to this subdivision shall be rounded as follows:

20 (A) To the nearest multiple of ten dollars (\$10) in the case of a  
21 liability or penalty that is less than or equal to one hundred dollars  
22 (\$100).

23 (B) To the nearest multiple of one hundred dollars (\$100) in the  
24 case of a liability or penalty that is greater than one hundred dollars  
25 (\$100), but less than or equal to one thousand dollars (\$1,000).

26 (C) To the nearest multiple of one thousand dollars (\$1,000) in  
27 the case of a liability or penalty that is greater than one thousand  
28 dollars (\$1,000) but less than or equal to ten thousand dollars  
29 (\$10,000).

30 (D) To the nearest multiple of five thousand dollars (\$5,000) in  
31 the case of a liability or penalty that is greater than ten thousand  
32 dollars (\$10,000).

33 (3) Inflation adjustments made pursuant to this subdivision are  
34 exempt from the requirements of Chapter 3.5 (commencing with  
35 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
36 Code. The updated civil and administrative liability or penalties  
37 pursuant to the inflation adjustment shall be filed with the Secretary  
38 of State and published in the California Code of Regulations.

39 (b) This section does not apply to any liability imposed under  
40 Section 1538.



1 (c) The board shall report to the Legislature with regard to the  
2 implementation of this section.

3 SEC. 8. Chapter 3.5 (commencing with Section 1110) is added  
4 to Part 1 of Division 2 of the Water Code, to read:

5  
6 CHAPTER 3.5. INTERIM RELIEF  
7

8 1110. (a) The board may issue an interim relief order in  
9 appropriate circumstances, after notice and an opportunity for a  
10 hearing, in proceedings to enforce all of the following:

11 (1) Section 2 of Article X of the California Constitution.

12 (2) The public trust doctrine.

13 (3) Water quality objectives adopted pursuant to subdivision  
14 (b) of Section 13142, Section 13170, or Section 13241.

15 (4) The requirements set forth in permits and licenses issued  
16 pursuant to Part 2 (commencing with Section 1200), including  
17 actions that invoke the board's reserved jurisdiction.

18 (5) Division 1 (commencing with Section 100), this division,  
19 or Article 7 (commencing with Section 13550) of Chapter 7 of  
20 Division 7.

21 (6) Section 5937 of the Fish and Game Code.

22 (b) The board may commence an interim relief proceeding on  
23 its own motion or upon the petition of any interested party. The  
24 board shall not accept any petition that does not include all of the  
25 following information:

26 (1) The name and address of the petitioner.

27 (2) A description of the specific diversion or use of water that  
28 the petitioner is contesting.

29 (3) A statement of the petitioner's interest in the contested  
30 diversion or use of water.

31 (4) Identification of the proceedings in which interim relief is  
32 requested.

33 (5) A description of the harm or injury complained of.

34 (6) An explanation of the nexus between the diversion or use  
35 and the alleged harm or injury.

36 (7) A statement of reasons that would justify the relief that the  
37 petitioner has requested.

38 (8) Any additional information that the board may deem  
39 appropriate.



1 (c) The board may dismiss a petition that does not raise  
2 substantial issues that are appropriate for review.

3 (d) Unless the board concludes that consideration of the matter  
4 is urgent, the board shall provide notice at least 20 days before the  
5 hearing date. In its discretion, the board may provide that the  
6 evidence to be considered shall be based on declarations under  
7 penalty of perjury, the testimony of witnesses at the hearing, or  
8 both. The board shall also consider oral or written legal argument  
9 that is provided in a timely manner by the parties. The board may  
10 establish a schedule for filing declarations and written arguments.

11 (e) If the board issues an interim relief order without providing  
12 at least 20 days' notice before the hearing date, or if the board  
13 issues an interim relief order after considering the declaration of  
14 any witness who is not available for cross examination, the interim  
15 relief order shall remain in effect for a period not to exceed 180  
16 days unless the party to whom the interim relief order is issued  
17 agrees to an extension of that period. This subdivision is not a  
18 limitation on the authority of the board to issue any additional  
19 interim relief in response to changed circumstances.

20 (f) In determining whether to provide interim relief, and the  
21 nature and extent of the relief, the board shall consider all relevant  
22 circumstances, including the effects on other legal users of water,  
23 fish, wildlife, and other instream beneficial uses, the extent of  
24 harm, the necessity for relief, and any appropriate measure to  
25 minimize any adverse effects of providing interim relief. Sufficient  
26 grounds shall exist for interim relief upon the same showing as  
27 would be required for a superior court to grant a preliminary  
28 injunction.

29 1111. (a) As part of the interim relief order, the board may  
30 require the water diverter or user to do any of the following:

31 (1) Cease all harmful practices.

32 (2) Employ specific procedures and operations to prevent or  
33 mitigate the harm.

34 (3) Complete technical and monitoring work and prepare and  
35 submit reports on that work, including draft environmental  
36 documentation.

37 (4) Participate in and provide funding for studies that the board  
38 determines are reasonably necessary to evaluate the impact of the  
39 diversion or use that is the subject of the proceeding.

1 (5) Reimburse the board's expenses for the preparation of any  
2 necessary environmental documentation.

3 (6) Take other required action.

4 (b) The board shall set a schedule for compliance with any  
5 interim relief order. If a schedule is not being met, the board may  
6 hold a hearing, in accordance with Section 1110, to consider  
7 changes or other actions which are appropriate under the  
8 circumstances, including, but not limited to, further interim relief  
9 or changes in the schedule.

10 1112. If the board orders interim relief, the board shall set a  
11 schedule, as soon as reasonably possible, for the board's  
12 consideration of permanent relief. The schedule shall include  
13 actions which the water diverter or user is required to undertake  
14 to ensure timely consideration of the permanent relief. The actions  
15 required of the water diverter or user may include, but are not  
16 limited to, the completion of technical and monitoring work, the  
17 preparation and submittal of reports on that work, including draft  
18 environmental documentation, and the reimbursement of the  
19 board's expenses. If the schedule is not being met, the board may  
20 hold a hearing in accordance with Section 1110 to consider changes  
21 or other actions as may be appropriate under the circumstances.  
22 Any permanent relief shall be granted after notice and an  
23 opportunity for a hearing.

24 1113. (a) Except as otherwise specified in this section, any  
25 interim relief order issued by the board is exempt from the  
26 requirements of Division 13 (commencing with Section 21000) if  
27 the Public Resources Code if the board makes either of the  
28 following findings:

29 (1) Providing interim relief will not have a significant adverse  
30 effect on the environment.

31 (2) Providing interim relief will result in environmental benefits,  
32 or avoid adverse impacts on the environment which may result  
33 from providing interim relief. If the board makes a finding pursuant  
34 to this paragraph, the board shall also adopt the finding or findings  
35 specified in Section 21081 of the Public Resources Code.

36 (b) Any findings of the board pursuant to this section shall be  
37 supported by substantial evidence in the record. If the board makes  
38 the findings specified in paragraph (1) of subdivision (a) of Section  
39 21081 of the Public Resources Code, or if the board finds that  
40 providing interim relief will not have a significant adverse effect

1 on the environment because any potentially significant adverse  
2 effect will be avoided as a result of mitigation incorporated in the  
3 board's order, the board shall adopt a reporting and monitoring  
4 program in accordance with Section 21081.6 of the Public  
5 Resources Code.

6 (c) Sections 21167, 21167.1, 21167.4, 21167.5, 21167.6,  
7 21167.7, 21167.8, 21168, 21168.5, 21168.9, and 21177 of the  
8 Public Resources Code shall apply to any action or proceeding to  
9 attack, review, set aside, void, or annul any action or decision of  
10 the board pursuant to this chapter on grounds of noncompliance  
11 with this section.

12 1114. The board may review and revise any part of an interim  
13 relief order at any time after notice to all interested parties and an  
14 opportunity for hearing.

15 1115. The adoption of an interim relief order by the board shall  
16 not be deemed to alter the burdens of proof or the burdens of  
17 coming forward in a subsequent proceeding for permanent relief  
18 before the board on the same factual and legal issues.

19 1116. This chapter is not a limitation on the jurisdiction of any  
20 court or agency over any matter within that court or agency's  
21 jurisdiction.

22 1117. If any water diverter or user fails to comply with any  
23 part of an interim relief order, the Attorney General, upon the  
24 request of the board, shall petition the superior court for the  
25 issuance of a prohibitory or mandatory injunctive relief, as  
26 necessary, through the issuance of a temporary restraining order,  
27 preliminary injunction, or permanent injunction.

28 1118. (a) Any person or entity who violates any interim relief  
29 order issued by the board is liable for a civil penalty of not more  
30 than five thousand dollars (\$5,000) for each day in which a  
31 violation occurs.

32 (1) Civil liability may be imposed by the superior court. The  
33 Attorney General, upon request of the board, shall petition the  
34 superior court to impose the liability.

35 (2) Civil liability may be imposed administratively by the board  
36 pursuant to Section 1055.

37 (b) In determining the appropriate amount, the court or the  
38 board, as the case may be, shall consider all the relevant  
39 circumstances, including the extent of harm caused by the violation,  
40 the nature and persistence of the violation, the length of time over

1 which the violation occurs, and any corrective action undertaken  
2 by the violator.

3 (c) Funds derived from civil penalties assessed pursuant to this  
4 section shall be deposited in the Water Rights Fund.

5 SEC. 9. Section 1126 of the Water Code is amended to read:

6 1126. (a) It is the intent of the Legislature that all issues  
7 relating to state water law decided by the board be reviewed in  
8 state courts, if a party seeks judicial review. It is further the intent  
9 of the Legislature that the courts assert jurisdiction and exercise  
10 discretion to fashion appropriate remedies pursuant to Section 389  
11 of the Code of Civil Procedure to facilitate the resolution of state  
12 water rights issues in state courts.

13 (b) Any party aggrieved by any decision or order may, not later  
14 than 30 days from the date of final action by the board, file a  
15 petition for a writ of mandate for review of the decision or order.  
16 Except in cases where the decision or order is issued under  
17 authority delegated to an officer or employee of the board,  
18 reconsideration before the board is not an administrative remedy  
19 that is required to be exhausted before filing a petition for writ of  
20 mandate. The time for filing the petition for writ of mandate and  
21 the time for filing an action or proceeding in which the board is a  
22 respondent under Section 21167 of the Public Resources Code  
23 shall be extended for any person who seeks reconsideration by the  
24 board pursuant to this article. The amendment of this subdivision  
25 made during the 2001 portion of the 2001–02 Regular Session  
26 does not constitute a change in, but is declaratory of, existing law.

27 (c) Section 1094.5 of the Code of Civil Procedure shall govern  
28 judicial proceedings under this section. For the purposes of  
29 subdivision (c) of Section 1094.5 of the Code of Civil Procedure,  
30 the court shall exercise its independent-judgment *judgment* on  
31 the evidence in any case involving the judicial review of a cease  
32 and desist order issued pursuant to Article 2 (commencing with  
33 Section 1831) of Chapter 12 of Part 2 of Division 2, and in any  
34 other case in which the court is authorized by law to exercise its  
35 independent-judgment *judgment* on the evidence. *The scope of*  
36 *review of any decision or order issued under Chapter 3.5*  
37 *(commencing with Section 1110) shall be the same as for a court*  
38 *of appeal review of a superior court decision.*

1 (d) If no aggrieved party petitions for a writ of mandate within  
2 the time provided by this section, the decision or order of the board  
3 is not subject to review by any court.

4 (e) In any court case reviewing a decision or order by the state  
5 board relating to a permit or license to appropriate water held by  
6 the state through the department or any other state agency, or to a  
7 permit or license to appropriate water held by the United States  
8 through the Bureau of Reclamation or any other federal agency,  
9 the election by the United States, or any agency thereof, not to be  
10 a party shall not, in and of itself, be the basis for dismissal pursuant  
11 to Section 389 of the Code of Civil Procedure or any other  
12 provision of law.

13 SEC. 10. Section 1240.5 is added to the Water Code, to read:

14 1240.5. In any proceeding before the board in which it is  
15 alleged that a right to appropriate water has ceased or is subject to  
16 forfeiture or revocation for nonuse, it shall be deemed that any  
17 diversion or use required to be reported pursuant to any reporting  
18 or monitoring requirement established under any permit, license,  
19 certificate, registration, decision or order, or regulation issued by  
20 the board pursuant to this division, Section 275, Article 7  
21 (commencing with Section 13550) of Division 7, or the public  
22 trust doctrine did not occur unless that diversion or use was  
23 reported to the board. This section does not apply to any diversion  
24 or use that occurred before January 1, 2009.

25 SEC. 11. Section 1525 of the Water Code is amended to read:

26 1525. (a) Each person or entity who holds a permit or license  
27 to appropriate water, and each lessor of water leased under Chapter  
28 1.5 (commencing with Section 1020) of Part 1, shall pay an annual  
29 fee according to a fee schedule established by the board.

30 (b) Each person or entity who files any of the following shall  
31 pay a fee according to a fee schedule established by the board:

32 (1) An application for a permit to appropriate water.

33 (2) A registration of appropriation for a small domestic use or  
34 livestock stockpond use.

35 (3) A petition for an extension of time within which to begin  
36 construction, to complete construction, or to apply the water to  
37 full beneficial use under a permit.

38 (4) A petition to change the point of diversion, place of use, or  
39 purpose of use, under a *registration for small domestic use or*  
40 *livestock stockpond use, or under a permit or license.*

1 (5) A petition to change the conditions of a permit or license,  
2 requested by the permittee or licensee, that is not otherwise subject  
3 to paragraph (3) or (4).

4 (6) *A petition under Section 1707 or 1740 to change the point*  
5 *of diversion, place of use, or purpose of use of a water right that*  
6 *is not subject to a permit or license to appropriate water.*

7 ~~(6)~~

8 (7) A petition to change the point of discharge, place of use, or  
9 purpose of use, of treated wastewater, requested pursuant to Section  
10 1211.

11 ~~(7)~~

12 (8) An application for approval of a water lease agreement.

13 ~~(8)~~

14 (9) A request for release from priority pursuant to Section 10504.

15 ~~(9)~~

16 (10) An application for an assignment of a state-filed application  
17 pursuant to Section 10504.

18 (11) *A statement of water diversion and use pursuant to Part*  
19 *5.1 (commencing with Section 5100).*

20 (c) The board shall set the fee schedule authorized by this section  
21 so that the total amount of fees collected pursuant to this section  
22 equals that amount necessary to recover costs incurred in  
23 connection with the issuance, administration, review, monitoring,  
24 and enforcement of permits, licenses, certificates, and registrations  
25 to appropriate water, water leases, *statements of diversion and use*,  
26 and orders approving changes in point of discharge, place of use,  
27 or purpose of use of treated wastewater. The board may include,  
28 as recoverable costs, but is not limited to including, the costs  
29 incurred in reviewing applications, registrations, *statements of*  
30 *diversion and use*, petitions and requests, prescribing terms of  
31 permits, licenses, registrations, and change orders, enforcing and  
32 evaluating compliance with permits, licenses, certificates,  
33 registrations, change orders, and water leases, inspection,  
34 monitoring, planning, modeling, reviewing documents prepared  
35 for the purpose of regulating the diversion and use of water,  
36 applying and enforcing *the public trust doctrine, Section 275*, the  
37 prohibition set forth in Section 1052 against the unauthorized  
38 diversion or use of water subject to this division, *the requirements*  
39 *under Part 5.1 (commencing with Section 5100) for filing*



1 *statements of diversion and use*, and the administrative costs  
2 incurred in connection with carrying out these actions.

3 (d) (1) The board shall adopt the schedule of fees authorized  
4 under this section as emergency regulations in accordance with  
5 Section 1530.

6 (2) For filings subject to subdivision (b), the schedule may  
7 provide for a single filing fee or for an initial filing fee followed  
8 by an annual fee, as appropriate to the type of filing involved, and  
9 may include supplemental fees for filings that have already been  
10 made but have not yet been acted upon by the board at the time  
11 the schedule of fees takes effect.

12 (3) The board shall set the amount of total revenue collected  
13 each year through the fees authorized by this section at an amount  
14 equal to the revenue levels set forth in the annual Budget Act for  
15 this activity. The board shall review and revise the fees each fiscal  
16 year as necessary to conform with the revenue levels set forth in  
17 the annual Budget Act. If the board determines that the revenue  
18 collected during the preceding year was greater than, or less than,  
19 the revenue levels set forth in the annual Budget Act, the board  
20 may further adjust the annual fees to compensate for the over or  
21 under collection of revenue.

22 (e) Annual fees imposed pursuant to this section for the 2003–04  
23 fiscal year shall be assessed for the entire 2003–04 fiscal year.

24 SEC. 12. Section 1535 of the Water Code is amended to read:

25 1535. (a) Any fee subject to this chapter that is required in  
26 connection with the filing of an application, registration, request,  
27 *statement*, or proof of claim, other than an annual fee required after  
28 the period covered by the initial filing fee, shall be paid to the  
29 board.

30 (b) If a fee established under subdivision (b) of Section 1525,  
31 Section 1528, or Section 13160.1 is not paid when due, the board  
32 may cancel the application, registration, petition, request, *statement*,  
33 or claim, or may refer the matter to the State Board of Equalization  
34 for collection of the unpaid fee.

35 SEC. 13. Section 1538 of the Water Code is amended to read:

36 1538. (a) In any proceeding pursuant to Section 1052 in which  
37 it is determined that there has been a violation of the prohibition  
38 against the unauthorized diversion or use of water subject to this  
39 division, the board or court, as the case may be, may impose an  
40 additional liability in the amount of *150 percent of any annual fees*



1 that would have been required under this division if the diversion  
2 or use had been authorized by a permit or license to appropriate  
3 water.

4 *(b) In any proceeding pursuant to Section 5107 in which the*  
5 *board imposes liability for a failure to file a statement of diversion*  
6 *and use or for a material misstatement in a statement of diversion*  
7 *and use, the board may impose an additional liability in the amount*  
8 *of 150 percent of any fees that have not been paid but would have*  
9 *been required under this division if the statement of diversion and*  
10 *use had been filed and did not make any material misstatement.*

11 *(c) The additional liability imposed under this section may*  
12 *include interest, at the rate provided under Section 685.010 of the*  
13 *Code of Civil Procedure, from the dates the annual fees would*  
14 *have been assessed.*

15 SEC. 14. Section 1551 of the Water Code is amended to read:  
16 1551. All of the following shall be deposited in the Water  
17 Rights Fund:

18 (a) All fees, expenses, and penalties collected by the board or  
19 the State Board of Equalization under this chapter and Part 3  
20 (commencing with Section 2000).

21 (b) All funds collected under Section 1052, ~~1845~~ *Section 1118,*  
22 *Article 4 (commencing with Section 1845) of Chapter 12, or Section*  
23 *5107.*

24 (c) All fees collected under Section 13160.1 in connection with  
25 certificates for activities involving hydroelectric power projects  
26 subject to licensing by the Federal Energy Regulatory Commission.

27 SEC. 15. Section 1825 of the Water Code is amended to read:

28 1825. It is the intent of the Legislature that the state should  
29 take vigorous action to enforce the terms and conditions of permits,  
30 licenses, certifications, and registrations to appropriate water, to  
31 enforce state board orders and decisions, ~~and~~ to prevent the  
32 unlawful diversion of water, *and to prevent the waste,*  
33 *unreasonable use, unreasonable method of use, or unreasonable*  
34 *method of diversion of water, and to enforce reporting and*  
35 *monitoring requirements.*

36 SEC. 16. Section 1831 of the Water Code is amended to read:

37 1831. (a) ~~When~~ *If* the board determines that any person is  
38 violating, or threatening to violate, any requirement described in  
39 subdivision (d), the board may issue an order to that person to  
40 cease and desist from that violation.

1 (b) The cease and desist order shall require that person to comply  
2 forthwith or in accordance with a time schedule set by the board.

3 (c) The board may issue a cease and desist order only after  
4 notice and an opportunity for hearing pursuant to Section 1834.

5 (d) The board may issue a cease and desist order in response to  
6 a violation or threatened violation of any of the following:

7 (1) The prohibition set forth in Section 1052 against the  
8 unauthorized diversion or use of water subject to this division.

9 (2) Any term or condition of a permit, license, certification, or  
10 registration issued under this division.

11 (3) Any decision or order of the board issued under this part,  
12 Section 275, or Article 7 (commencing with Section 13550) of  
13 Chapter 7 of Division 7, in which decision or order the person to  
14 whom the cease and desist order will be issued, or a predecessor  
15 in interest to that person, was named as a party directly affected  
16 by the decision or order.

17 (4) *Any regulation adopted under Section 275 provided that the*  
18 *board shall not issue a cease and desist order for violation of a*  
19 *regulation adopted by the department, other than a regulation*  
20 *jointly adopted by the department and board, unless enforcement*  
21 *is requested by the department.*

22 (5) *Any reporting or monitoring requirement established under*  
23 *any decision, order, or regulation issued by the board pursuant*  
24 *to this division, Section 275, Article 7 (commencing with Section*  
25 *13550) of Division 7, or the public trust doctrine.*

26 (e) This article ~~shall~~ *does* not authorize the board to regulate,  
27 in any manner, the diversion or use of water not otherwise subject  
28 to regulation ~~of by the board under this part.~~

29 SEC. 17. Section 1845 of the Water Code is amended to read:

30 1845. (a) Upon the failure of any person to comply with a  
31 cease and desist order issued by the board pursuant to this chapter,  
32 the Attorney General, upon the request of the board, shall petition  
33 the superior court for the issuance of prohibitory or mandatory  
34 injunctive relief as appropriate, including a temporary restraining  
35 order, preliminary injunction, or permanent injunction.

36 (b) (1) Any person or entity who violates a cease and desist  
37 order issued pursuant to this chapter may be liable ~~for a sum in an~~  
38 ~~amount not to exceed one thousand dollars (\$1,000) for each day~~  
39 ~~in which the violation occurs.~~ *the sum of the following:*

1 (A) Two thousand five hundred dollars (\$2,500) for each day  
2 in which the violation occurs.

3 (B) Two thousand five hundred dollars (\$2,500) for each  
4 acre-foot of water diverted or used in violation of the cease and  
5 desist order.

6 (2) Civil liability may be imposed by the superior court. The  
7 Attorney General, upon the request of the board, shall petition the  
8 superior court to impose, assess, and recover those sums.

9 (3) Civil liability may be imposed administratively by the board  
10 pursuant to Section 1055.

11 (c) In determining the appropriate amount, the court, or the  
12 board, as the case may be, shall take into consideration all relevant  
13 circumstances, including, but not limited to, the extent of harm  
14 caused by the violation, the nature and persistence of the violation,  
15 the length of time over which the violation occurs, and the  
16 corrective action, if any, taken by the violator.

17 (d) All funds recovered pursuant to this section shall be  
18 deposited in the Water Rights Fund established pursuant to Section  
19 1550.

20 SEC. 18. Section 1846 is added to the Water Code, to read:

21 1846. (a) Any person or entity subject to a monitoring or  
22 reporting requirement specified in subdivision (f) who violates  
23 that reporting or monitoring requirement, makes a material  
24 misstatement in any record or report submitted under that reporting  
25 or monitoring requirement, or tampers with or renders inaccurate  
26 any monitoring device required under that reporting or monitoring  
27 requirement shall be liable for a sum not to exceed five hundred  
28 dollars (\$500) for each day in which the violation occurs.

29 (b) Civil liability may be imposed by the superior court. The  
30 Attorney General, upon the request of the board, shall petition the  
31 superior court to impose, assess, and recover those sums.

32 (c) Civil liability may be imposed administratively by the board  
33 pursuant to Section 1055.

34 (d) In determining the appropriate amount, the court, or the  
35 board, as the case may be, shall take into consideration all relevant  
36 circumstances, including, but not limited to, the extent of harm  
37 caused by the violation, the nature and persistence of the violation,  
38 the length of time over which the violation occurs, and the  
39 corrective action, if any, taken by the violator.

1 (e) All funds recovered pursuant to this section shall be  
2 deposited in the Water Rights Fund established pursuant to Section  
3 1550.

4 (f) (1) This section applies to any reporting or monitoring  
5 requirement established under any permit, license, certificate,  
6 registration, decision or order, or regulation issued by the board  
7 pursuant to this division, Section 275, Article 7 (commencing with  
8 Section 13550) of Division 7, or the public trust doctrine.

9 (2) This section also applies to any reporting or monitoring  
10 requirement established by the department under Section 275 or  
11 286, if the department requests enforcement pursuant to this  
12 section.

13 (3) This section does not provide a basis for imposing liability  
14 on a watermaster who is subject to reporting or monitoring  
15 requirements but does not divert or use the water subject to those  
16 requirements.

17 SEC. 19. Section 1847 is added to the Water Code, to read:

18 1847. (a) Any person or entity who violates any term or  
19 condition of a permit, license, certificate, or registration issued  
20 under this division or any order or regulation adopted by the board  
21 under Section 275 may be liable in an amount not to exceed five  
22 hundred dollars (\$500) for each day in which the violation occurs.

23 (b) Civil liability may be imposed by the superior court. The  
24 Attorney General, upon the request of the board, shall petition the  
25 superior court to impose, assess, and recover those sums.

26 (c) Civil liability may be imposed administratively by the board  
27 pursuant to Section 1055.

28 (d) In determining the appropriate amount, the court, or the  
29 board, as the case may be, shall take into consideration all relevant  
30 circumstances, including, but not limited to, the extent of harm  
31 caused by the violation, the nature and persistence of the violation,  
32 the length of time over which the violation occurs, and the  
33 corrective action, if any, taken by the violator.

34 (e) No liability shall be recoverable under this section for any  
35 violation for which liability is recovered under Section 1052 or  
36 1846.

37 (f) All funds recovered pursuant to this section shall be deposited  
38 in the Water Rights Fund established pursuant to Section 1550.

39 SEC. 20. Section 2525 of the Water Code is amended to read:

1     2525. Upon petition signed by one or more claimants to water  
2 of any stream system, requesting the determination of the rights  
3 of the various claimants to the water of that stream system, the  
4 board shall, if, upon investigation, it finds the facts and conditions  
5 are such that the public interest and necessity will be served by a  
6 determination of the water rights involved, enter an order granting  
7 the petition and make proper arrangements to proceed with the  
8 determination. *The board may initiate a determination of rights*  
9 *under its own motion if after a hearing it finds that the public*  
10 *interest and necessity will be served by a determination of the*  
11 *rights involved.*

12     SEC. 21. Section 2526 of the Water Code is amended to read:

13     2526. As soon as practicable after granting the petition *or*  
14 *motion* the board shall prepare and issue a notice setting forth the  
15 following:

16     (a) The facts of the entry of the order and of the pendency of  
17 the ~~proceedings~~; *proceedings*.

18     (b) That all claimants to rights to the use of water of the stream  
19 system are required to inform the board within 60 days from the  
20 date of the notice, or such further time as the board may allow, of  
21 their intention to file proof of ~~claim~~; *claim*.

22     (c) The date prior to which all claimants to rights to the water  
23 of the stream system shall notify the board in writing of their  
24 intention to file proof of claim and the address to which all  
25 subsequent notices to the claimant relating to the proceedings may  
26 be ~~sent~~; *sent*.

27     (d) A statement that all claimants will be required to make proof  
28 of their claims at a time to be fixed by the board after the  
29 conclusion of its investigation.

30     SEC. 22. Section 2550 of the Water Code is amended to read:

31     2550. As soon as practicable after granting the petition *or*  
32 *motion*, the board shall begin an investigation of the stream system,  
33 of the diversion of water, of all beneficial uses being made of the  
34 water, and of the water supply available for those uses, and shall  
35 gather such other data and information as may be essential to the  
36 proper determination of the water rights in the stream system.

37     SEC. 23. Section 2763.5 of the Water Code is amended to read:

38     2763.5. (a) No exception to the order of determination shall  
39 be considered, except in the court's discretion for good cause  
40 shown, unless the matter of the exception was presented to the

1 board in the form of an objection. Good cause includes, but is not  
2 limited to, the existence of newly discovered relevant evidence  
3 which, in the exercise of reasonable diligence, could not have been  
4 presented to the board during the board's proceedings.

5 (b) This section does not apply to persons to whom the board  
6 did not mail either (1) written notice of the board meeting at which  
7 the petition *or motion* pursuant to Section 2525 is to be considered  
8 as an item of business, or (2) written notice of the pendency of the  
9 proceedings pursuant to Section 2526.

10 SEC. 24. Section 5106 of the Water Code is amended to read:

11 5106. (a) Neither the statements submitted under this part nor  
12 the determination of facts by the board pursuant to Section 5105  
13 shall establish or constitute evidence of a right to divert or use  
14 water.

15 (b) (1) The board may rely on the names and addresses included  
16 in statements submitted under this part for the purpose of  
17 determining the names and addresses of persons who are to receive  
18 notices with regard to proceedings before the board.

19 (2) Notwithstanding paragraph (1), any person may submit, in  
20 writing, a request to the board to provide notification to a different  
21 address, and the board shall provide the notification to that address.

22 (3) If the board provides notice to persons who file statements  
23 under this part, the notice shall not be determined to be inadequate  
24 on the basis that notice was not received by a person, other than a  
25 party to whom the board's action is directed, who fails to file a  
26 statement required to be filed under this part.

27 (4) This subdivision does not affect the requirement in Section  
28 2527 to provide notice to all persons who own land that appears  
29 to be riparian to the stream system.

30 (c) In any proceeding before the board to determine whether an  
31 application for a permit to appropriate water should be approved,  
32 any statement submitted under this part or determination by the  
33 board pursuant to Section 5105 is evidence of the facts stated  
34 therein.

35 (d) (1) *In any proceeding before the board in which it is alleged*  
36 *that an appropriative right has ceased or is subject to forfeiture*  
37 *for nonuse because water has not been put to beneficial use, there*  
38 *shall be a rebuttable presumption that no use required to be*  
39 *included in a statement submitted under this part occurred unless*  
40 *that use is included in a statement submitted under this part and*



1 *that the statement is submitted within six months after it is required*  
2 *to be filed with the board.*

3 *(2) Paragraph (1) does not apply to any use that occurred before*  
4 *January 1, 2009.*

5 SEC. 25. Part 2.11 (commencing with Section 10920) is added  
6 to Division 6 of the Water Code, to read:

7  
8 PART 2.11. GROUNDWATER MONITORING

9  
10 CHAPTER 1. GENERAL PROVISIONS

11  
12 10920. (a) It is the intent of the Legislature that on or before  
13 January 1, 2012, groundwater elevations in all groundwater basins  
14 and subbasins be regularly and systematically monitored locally  
15 and that the resulting groundwater information be made readily  
16 and widely available.

17 (b) It is the intent of the Legislature that, if local groundwater  
18 interests are unable or unwilling to perform the monitoring  
19 functions described in this part, the department shall assume those  
20 monitoring functions and the department shall recover its costs for  
21 conducting the necessary monitoring from the local groundwater  
22 users.

23 (c) It is further the intent of the Legislature that the department  
24 continue to maintain its current network of monitoring wells,  
25 including groundwater elevation and groundwater quality  
26 monitoring wells, and that the department continue to coordinate  
27 monitoring with local entities.

28 10921. This part does not require the monitoring of  
29 groundwater elevations in an area that is not within a basin or  
30 subbasin.

31 10922. This part does not expand or otherwise affect the powers  
32 or duties of the department relating to groundwater beyond those  
33 expressly granted by this part.

34  
35 CHAPTER 2. DEFINITIONS

36  
37 10925. Unless the context otherwise requires, the definitions  
38 set forth in this section govern the construction of this part.



1 (a) “Basin” or “subbasin” means a groundwater basin or  
2 subbasin identified and defined in the department’s Bulletin No.  
3 118.

4 (b) “Bulletin No. 118” means the department’s report entitled  
5 “California’s Groundwater: Bulletin 118” updated in 2003, or as  
6 it may be subsequently updated or revised in accordance with  
7 Section 12924.

8 (c) “Monitoring entity” means a party conducting or  
9 coordinating the monitoring of groundwater elevations pursuant  
10 to this part.

11 (d) “Monitoring functions” and “groundwater monitoring  
12 functions” means the monitoring of groundwater elevations, the  
13 reporting of those elevations to the department, and other related  
14 actions required by this part.

15 (e) “Monitoring groundwater elevations” means monitoring  
16 groundwater elevations, coordinating the monitoring of  
17 groundwater elevations, or both.

18 (f) “Voluntary cooperative groundwater monitoring association”  
19 means an association formed for the purposes of monitoring  
20 groundwater elevations pursuant to Section 10935.

21  
22 CHAPTER 3. GROUNDWATER MONITORING PROGRAM  
23

24 10927. Any of the following entities may assume responsibility  
25 for monitoring and reporting groundwater elevations in all or a  
26 part of a basin or subbasin in accordance with this part:

27 (a) A watermaster or water management engineer appointed by  
28 a court or pursuant to statute to administer a final judgment  
29 determining rights to groundwater.

30 (b) (1) A groundwater management agency with statutory  
31 authority to manage groundwater pursuant to its principle act that  
32 is monitoring groundwater elevations in all or a part of a  
33 groundwater basin or subbasin on or before January 1, 2010.

34 (2) A water replenishment district established pursuant to  
35 Division 18 (commencing with Section 60000). This part does not  
36 expand or otherwise affect the authority of a water replenishment  
37 district relating to monitoring groundwater elevations.

38 (c) A local agency that is managing all or part of a groundwater  
39 basin or subbasin pursuant to Part 2.75 (commencing with Section  
40 10750) and that was monitoring groundwater elevations in all or

1 a part of a groundwater basin or subbasin on or before January 1,  
2 2010, or a local agency or county that is managing all or part of a  
3 groundwater basin or subbasin pursuant to any other legally  
4 enforceable groundwater management plan with provisions that  
5 are substantively similar to those described in that part and that  
6 was monitoring groundwater elevations in all or a part of a  
7 groundwater basin or subbasin on or before January 1, 2010.

8 (d) A local agency that is managing all or part of a groundwater  
9 basin or subbasin pursuant to an integrated regional water  
10 management plan prepared pursuant to Part 2.2 (commencing with  
11 Section 10530) that includes a groundwater management  
12 component that complies with the requirements of Section 10753.7.

13 (e) A county that is not managing all or a part of a groundwater  
14 basin or subbasin pursuant to a legally enforceable groundwater  
15 management plan with provisions that are substantively similar to  
16 those described in Part 2.75 (commencing with Section 10750).

17 (f) A voluntary cooperative groundwater monitoring association  
18 formed pursuant to Section 10935.

19 (g) The department pursuant to Section 10934.

20 10928. (a) Any entity described in subdivision (a) or (b) of  
21 Section 10927 that seeks to assume groundwater monitoring  
22 functions in accordance with this part shall notify the department,  
23 in writing, on or before January 1, 2011. The notification shall  
24 include all of the following information:

25 (1) The entity's name, address, telephone number, and any other  
26 relevant contact information.

27 (2) The specific authority described in Section 10927 pursuant  
28 to which the entity qualifies to assume the groundwater monitoring  
29 functions.

30 (3) A map showing the area for which the entity is requesting  
31 to perform the groundwater monitoring functions.

32 (4) A statement that the entity will comply with all of the  
33 requirements of this part.

34 (b) Any entity described in subdivision (c), (d), (e), or (f) of  
35 Section 10927 that seeks to assume groundwater monitoring  
36 functions in accordance with this part shall notify the department,  
37 in writing, by January 1, 2011. The information provided in the  
38 notification shall include all of the following:

39 (1) The entity's name, address, telephone number, and any other  
40 relevant contact information.

1 (2) The specific authority described in Section 10927 pursuant  
2 to which the entity qualifies to assume the groundwater monitoring  
3 functions.

4 (3) For entities that seek to qualify pursuant to subdivision (c)  
5 or (d) of Section 10927, the notification shall also include a copy  
6 of the current groundwater management plan or the groundwater  
7 component of the integrated regional water management plan, as  
8 appropriate.

9 (4) For entities that seek to qualify pursuant to subdivision (f)  
10 of Section 10927, the notification shall include a statement of  
11 intention to meet the requirements of Section 10935.

12 (5) A map showing the area for which the entity is proposing  
13 to perform the groundwater monitoring functions.

14 (6) A statement that the entity will comply with all of the  
15 requirements of this part.

16 (7) A statement describing the ability and qualifications of the  
17 entity to conduct the groundwater monitoring functions required  
18 by this part.

19 (c) The department may request additional information that it  
20 deems necessary for the purposes of determining the area that is  
21 proposed to be monitored or the qualifications of the entity to  
22 perform the groundwater monitoring functions.

23 10929. (a) (1) The department shall review all notifications  
24 received pursuant to Section 10928.

25 (2) Upon the receipt of a notification pursuant to subdivision  
26 (a) of Section 10928, the department shall verify that the notifying  
27 entity has the appropriate authority under subdivision (a) or (b) of  
28 Section 10927.

29 (3) Upon the receipt of a notification pursuant to subdivision  
30 (b) of Section 10928, the department shall do both of the following:

31 (A) Verify that each notification is complete.

32 (B) Assess the qualifications of the notifying party.

33 (b) If the department has questions about the completeness or  
34 accuracy of a notification, or the qualifications of a party, the  
35 department shall contact the party to resolve any deficiencies. If  
36 the department is unable to resolve the deficiencies, the department  
37 shall notify the party in writing that the notification will not be  
38 considered further until the deficiencies are corrected.

39 (c) If the department determines that more than one party seeks  
40 to become the monitoring entity for the same portion of a basin or

1 subbasin, the department shall consult with the interested parties  
2 to determine which party will perform the monitoring functions.  
3 In determining which party will perform the monitoring functions  
4 under this part, the department shall follow the order in which  
5 entities are identified in Section 10927.

6 (d) The department shall advise each party on the status of its  
7 notification within three months of receiving the notification.

8 10930. Upon completion of each review pursuant to Section  
9 10929, the department shall do both of the following if it  
10 determines that a party will perform monitoring functions under  
11 this part:

12 (a) Notify the party in writing that it is a monitoring entity and  
13 the specific portion of the basin or subbasin for which it shall  
14 assume groundwater monitoring functions.

15 (b) Post on the department's Internet Web site information that  
16 identifies the monitoring entity and the portion of the basin or  
17 subbasin for which the monitoring entity will be responsible.

18 10931. (a) The department shall work cooperatively with each  
19 monitoring entity to determine the manner in which groundwater  
20 elevation information should be reported to the department pursuant  
21 to this part. In determining what information should be reported  
22 to the department, the department shall defer to existing monitoring  
23 programs if those programs result in information that demonstrates  
24 seasonal and long-term trends in groundwater elevations. The  
25 department shall collaborate with the State Department of Public  
26 Health to ensure that the information reported to the department  
27 will not result in the inappropriate disclosure of the physical  
28 address or geographical location of drinking water sources, storage  
29 facilities, pumping operational data, or treatment facilities.

30 (b) (1) For the purposes of this part, the department may  
31 recommend improvements to an existing monitoring program,  
32 including recommendations for additional monitoring wells.

33 (2) The department may not require additional monitoring wells  
34 unless funds are provided for that purpose.

35 10932. Monitoring entities shall commence monitoring and  
36 reporting groundwater elevations pursuant to this part on or before  
37 January 1, 2012.

38 10933. (a) On or before January 1, 2012, the department shall  
39 commence to identify the extent of monitoring of groundwater  
40 elevations that is being undertaken within each basin and subbasin.

1 (b) The department shall prioritize groundwater basins and  
2 subbasins for the purpose of implementing this section. In  
3 prioritizing the basins and subbasins, the department shall, to the  
4 extent data are available, consider all of the following:

5 (1) The population overlying the basin or subbasin.

6 (2) The rate of current and projected growth of the population  
7 overlying the basin or subbasin.

8 (3) The number of public supply wells that draw from the basin  
9 or subbasin.

10 (4) The total number of wells that draw from the basin or  
11 subbasin.

12 (5) The irrigated acreage overlying the basin or subbasin.

13 (6) The degree to which persons overlying the basin or subbasin  
14 rely on groundwater as their primary source of water.

15 (7) Any documented impacts on the groundwater within the  
16 basin or subbasin, including overdraft, subsidence, saline intrusion,  
17 and other water quality degradation.

18 (8) Any other information determined to be relevant by the  
19 department.

20 (c) If the department determines that all or part of a basin or  
21 subbasin is not being monitored pursuant to this part, the  
22 department shall do all of the following:

23 (1) Attempt to contact all well owners within the area not being  
24 monitored.

25 (2) Determine if there is an interest in establishing any of the  
26 following:

27 (A) A groundwater management plan pursuant to Part 2.75  
28 (commencing with Section 10750).

29 (B) An integrated regional water management plan pursuant to  
30 Part 2.2 (commencing with Section 10530) that includes a  
31 groundwater management component that complies with the  
32 requirements of Section 10753.7.

33 (C) A voluntary groundwater monitoring association pursuant  
34 to Section 10935.

35 (d) If the department determines that there is sufficient interest  
36 in establishing a plan or association described in paragraph (2) of  
37 subdivision (c), or if the county agrees to perform the groundwater  
38 monitoring functions in accordance with this part, the department  
39 shall work cooperatively with the interested parties to comply with  
40 the requirements of this part within two years.

(e) If the department determines, with regard to a basin or subbasin, that there is insufficient interest in establishing a plan or association described in paragraph (2) of subdivision (c), and if the county decides not to perform the groundwater monitoring and reporting functions of this part, the department shall do all of the following:

(1) Identify any existing monitoring wells that overlie the basin or subbasin that are owned or operated by the department or any other state or federal agency.

(2) Determine whether the monitoring wells identified pursuant to paragraph (1) provide sufficient information to demonstrate seasonal and long-term trends in groundwater elevations.

(3) If the department determines that the monitoring wells identified pursuant to paragraph (1) provide sufficient information to demonstrate seasonal and long-term trends in groundwater elevations, the department shall not perform groundwater monitoring functions pursuant to Section 10934.

(4) If the department determines that the monitoring wells identified pursuant to paragraph (1) provide insufficient information to demonstrate seasonal and long-term trends in groundwater elevations, and the State Mining and Geology Board concurs with that determination, the department shall perform groundwater monitoring functions pursuant to Section 10934.

10934. (a) Consistent with Section 10933, the department shall perform the groundwater monitoring functions for those portions of a basin or subbasin for which no monitoring entity has agreed to perform the groundwater monitoring functions.

(b) Upon determining that it is required to perform groundwater monitoring functions, the department shall notify both of the following entities that it is forming the groundwater monitoring district:

(1) Each well owner within the affected area.

(2) Each county that contains all or a part of the affected area.

(c) The department shall impose a charge on each well owner for its share of the costs of the department to perform the groundwater monitoring required under this part.

(d) The department shall not assess a fee or charge to recover the costs for carrying out its power and duties under this part except as provided in subdivision (c).



1 (e) The department may establish regulations to implement this  
2 section.

3 10935. (a) A voluntary cooperative groundwater monitoring  
4 association may be formed for the purposes of monitoring  
5 groundwater elevations in accordance with this part. The  
6 association may be established by contract, a joint powers  
7 agreement, a memorandum of agreement, or other form of  
8 agreement deemed acceptable by the department.

9 (b) Upon notification to the department by one or more entities  
10 that seek to form a voluntary cooperative groundwater monitoring  
11 association, the department shall work cooperatively with the  
12 interested parties to facilitate the formation of the association.

13 (c) The contract or agreement shall include all of the following:

14 (1) The names of the participants.

15 (2) The boundaries of the area covered by the agreement.

16 (3) The name or names of the parties responsible for meeting  
17 the requirements of this part.

18 (4) The method of recovering the costs associated with meeting  
19 the requirements of this part.

20 (5) Other provisions that may be required by the department.

21 SEC. 26. Section 12924 of the Water Code is repealed.

22 ~~12924. (a) The department shall, in conjunction with other  
23 public agencies, conduct an investigation of the state's groundwater  
24 basins. The department shall identify the state's groundwater basins  
25 on the basis of geological and hydrological conditions and  
26 consideration of political boundary lines whenever practical. The  
27 department shall also investigate existing general patterns of  
28 groundwater pumping and groundwater recharge within such basins  
29 to the extent necessary to identify basins which are subject to  
30 critical conditions of overdraft.~~

31 ~~(b) The department shall report its findings to the Governor and  
32 the Legislature not later than January 1, 1980.~~

33 SEC. 27. Section 12924 is added to the Water Code, to read:

34 12924. (a) The department, in conjunction with other public  
35 agencies, shall conduct an investigation of the state's groundwater  
36 basins. The department shall identify the state's groundwater basins  
37 on the basis of geological and hydrological conditions and  
38 consideration of political boundary lines whenever practical. The  
39 department shall also investigate existing general patterns of  
40 groundwater pumping and groundwater recharge within such basins



1 to the extent necessary to identify basins that are subject to critical  
2 conditions of overdraft.

3 (b) The department shall report its findings to the Governor and  
4 the Legislature not later than January 1, 2012, and thereafter in  
5 years ending in 5 and 0.

6 SEC. 28. No reimbursement is required by this act pursuant to  
7 Section 6 of Article XIII B of the California Constitution because  
8 the only costs that may be incurred by a local agency or school  
9 district will be incurred because this act creates a new crime or  
10 infraction, eliminates a crime or infraction, or changes the penalty  
11 for a crime or infraction, within the meaning of Section 17556 of  
12 the Government Code, or changes the definition of a crime within  
13 the meaning of Section 6 of Article XIII B of the California  
14 Constitution.

15 SEC. 29. This act shall only become operative if \_\_\_\_ of the  
16 2009–10 Regular Session of the Legislature are enacted and  
17 become effective on or before January 1, 2010.

## **2009 Delta & Water Reform Legislation – October 12**

### **Water Rights Enforcement Tools**

**SUMMARY:** Provides enforcement tools for the State Water Resources Control Board (SWRCB) to enforce existing water rights laws. Specifically, the proposed agreement on water rights enforcement tools:

- 1) Increases consequences for not reporting water diversions or use.
  - a) Establishes rebuttable presumption that diversions/use did not occur in certain SWRCB proceedings, but would not apply to diversion/use occurring before January 1, 2009;
  - b) Creates rebuttable presumption that no use occurred in certain SWRCB proceedings, but would not apply to diversion/use occurring before January 1, 2009;
  - c) Raises current additional penalty for unauthorized diversions from 100% of amount of fees that would have been collected had that diversion been reported, to 150%;
  - d) Authorizes additional penalty for failing to file, or material statements in, statements of diversion and use of 150% of the amount of fees that would have been collected; and,
  - e) Adds a new penalty for violators of monitoring requirements or activities, not to exceed five hundred dollars (\$500) for each day in which the violation occurs.
- 2) Imposes or increases penalties for violating water rights laws.
  - a) Increases penalties for unauthorized diversion or use to:
    - i) \$1,000 per day of violation for the first offense
    - ii) either \$1,000 per day or the highest market value of the water subject to trespass – whichever is higher – for subsequent violations
  - b) Increases penalties for violating a cease and desist order to the greater of \$1000 per day (1<sup>st</sup> offense)/\$5000 per day (subsequent offenses) or the highest market value of the water diverted or used in violation of the cease and desist order.
  - c) Adds penalty, not to exceed \$500 per day of violation, for any violation of term or condition of a permit, license, certificate, or registration, or any order or regulation adopted by SWRCB to prevent waste or unreasonable use; and,
- 3) Allows SWRCB, in certain investigations, to order any water diverter or water user to prepare technical or monitoring program reports under penalty of perjury;
- 4) Expands list of filing fees, to include: registrations for small domestic use or livestock stockpond use; petitions to change the point of diversion, place of use, or purpose of use of a water right that is not subject to a permit or license to appropriate water; and statements of water diversion and use.

- 5) Authorizes SWRCB to initiate statutory adjudication to determine rights of various claimants to the water of a stream system *under its own motion* if after a hearing it finds that the public interest and necessity will be served by a determination of the rights involved

EXISTING LAW requires SWRCB to administer and enforce the California water rights system.

COMMENTS: Since the Assembly Water, Parks and Wildlife (WP&W) Committee considered provisions for these SWRCB water right enforcement tools, as part of SB 68 (Steinberg) on September 11, this portion of the 2009 Delta/water legislative package has changed significantly, although not substantially. In comparison to SB 68 (9/11/09 version), this proposed agreement would:

- Add authority/appropriation for SWRCB to hire 25 additional enforcement personnel.
- Delete SWRCB authority to issue interim relief that would stop diversions as litigation over that diversion proceeds.
- Change the penalties for illegal diversion by:
  - distinguishing between first and subsequent offenses
  - reducing fines for first offenses to up to \$1000/day (not \$1000/acre-foot as well) or the highest market value of the water, whichever is greater
  - increasing fines for subsequent offenses to up to \$5000 /day or the highest market value for the water diverted illegally, whichever is greater
- Delete expansion of SWRCB authority to issue cease-and-desist orders for violations of unreasonable use limits, public trust doctrine that protects fishery and other public resources, or monitoring requirements.
- Delete legislative intent to enforce reasonable use/public trust vigorously.
- Delete requirement that SWRCB increase penalties for inflation.
- Eliminate reporting exemptions for Delta diversions, consistent with AB 900 (DeLeon).

SWRCB Enforcement Tools: This proposal provides new and increased penalties for violating water rights law and expands SWRCB's authority to enforce existing water rights laws. The bill does not change existing water rights law or expand SWRCB jurisdiction. In effect, these changes would level the playing field to support better enforcement of water rights laws. These penalties have not been increased in decades and fail to reflect the economic value of compliance. In some cases, there is no penalty at all, such as violation of permit terms. While SWRCB may be able to issue a cease-and-desist order for illegal diversions, such techniques set a high bar for enforcement and fail to recover enforcement costs.

The Delta Vision Committee Implementation Report (AKA the Chrisman Report, December 2008), while not commenting on this precise set of penalties and enforcement authorities, called for legislation to enhance and expand the SWRCB's water rights administrative accountability. These recommendations do not adversely affect the current water right priority system, including area-of-origin priorities, but rather strengthen the current administrative system. As the Chrisman Report suggested, "appropriate enforcement will protect existing water rights." This proposal would give SWRCB authority to take actions to make the water rights system work for all water users and the environment, including:

- better enforcement of existing water diversion/use reporting requirements
- SWRCB authority to start an adjudication of water rights on a stream
- connection between illegal diversions and economic values

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

**SB X7 1 (Steinberg) – October 23, 2009**  
**Delta & Water Reform Legislation**  
**SUMMARY: Water Rights Enforcement Tools**

SUMMARY: Provides enforcement tools for the State Water Resources Control Board (SWRCB) to enforce existing water rights laws. Specifically, this part of SB X7 1:

- 1) Increases consequences for not reporting water diversions or use.
  - a) Establishes rebuttable presumption that diversions/use did not occur in certain SWRCB proceedings, but would not apply to diversion/use occurring before January 1, 2009;
  - b) Creates rebuttable presumption that no use occurred in certain SWRCB proceedings, but would not apply to diversion/use occurring before January 1, 2009;
  - c) Raises current additional penalty for unauthorized diversions from 100% of amount of fees that would have been collected had that diversion been reported, to 150%;
  - d) Authorizes additional penalty for failing to file, or material statements in, statements of diversion and use of 150% of the amount of fees that would have been collected; and,
  - e) Adds a new penalty for violators of monitoring requirements or activities, not to exceed five hundred dollars (\$500) for each day in which the violation occurs.
- 2) Imposes or increases penalties for violating water rights laws.
  - a) Increases penalties for unauthorized diversion or use to an amount not to exceed the larger of:
    - i) \$1,000 per day of violation for the first offense; \$5,000 for subsequent offenses; or
    - ii) the highest market value of the water subject to trespass
  - b) Increases penalties for violating a cease and desist order to the greater of \$1000 per day (1<sup>st</sup> offense)/\$5000 per day (subsequent offenses) or the highest market value of the water diverted or used in violation of the cease and desist order.
  - c) Adds penalty, not to exceed \$500 per day of violation, for any violation of term or condition of a permit, license, certificate, or registration, or any order or regulation adopted by SWRCB to prevent waste or unreasonable use.
  - d) Limits civil liability imposed by superior court to three years before filing of complaint.
- 3) Allows SWRCB, in certain investigations, to order any water diverter or water user to prepare technical or monitoring program reports under penalty of perjury;

- 4) Expands list of filing fees, to include: registrations for small domestic use or livestock stockpond use; petitions to change the point of diversion, place of use, or purpose of use of a water right that is not subject to a permit or license to appropriate water; and statements of water diversion and use.
- 5) Authorizes SWRCB to initiate statutory adjudication to determine rights of various claimants to the water of a stream system *under its own motion* if after a hearing it finds that the public interest and necessity will be served by a determination of the rights involved.
- 6) Deletes exemptions from water diversion/use reporting requirements for Delta diverters.
- 7) Appropriates approximately \$3.7 million in fee-related funding from the Water Rights Fund to hire 25 additional water rights enforcement personnel at SWRCB.

EXISTING LAW requires SWRCB to administer and enforce the California water rights system, and funds the SWRCB Water Rights Division by water diversion fees.

COMMENTS: Since the Assembly Water, Parks and Wildlife (WP&W) Committee considered provisions for these SWRCB water right enforcement tools, as part of SB 68 (the regular session version of this bill) on September 11, this portion of the 2009 Delta/water legislative package has changed significantly. In comparison to SB 68, this bill would:

- Add authority/appropriation for SWRCB to hire 25 additional enforcement personnel.
- Delete SWRCB authority to issue interim relief that would stop diversions as litigation over that diversion proceeds.
- Change the penalties for illegal diversion by:
  - distinguishing between first and subsequent offenses
  - introducing the concept of highest market value for the water diverted illegally
  - reducing fines for first offenses to up to \$1000/day (not \$1000/acre-foot as well)
  - increasing fines for subsequent offenses to up to \$5000 /day
  - capping the maximum fine at the greater of daily fine or highest market value
- Delete expansion of SWRCB authority to issue cease-and-desist orders for violations of unreasonable use limits, public trust doctrine that protects fishery and other public resources, or monitoring requirements.
- Delete legislative intent to enforce reasonable use/public trust vigorously.
- Delete requirement that SWRCB increase penalties for inflation.
- Add provisions to eliminate reporting exemptions for Delta diversions, consistent with AB 900 (DeLeon).

SWRCB Enforcement Tools: This bill provides new and increased penalties for violating water rights law and expands SWRCB's authority to enforce existing water rights laws. The bill does not change existing water rights law or expand SWRCB jurisdiction. In effect, these changes would level the playing field to support better enforcement of water rights laws. These penalties have not been increased in decades and fail to reflect the economic value of compliance. In some cases, there is no penalty at all, such as violation of permit terms. While SWRCB may be able to issue a cease-and-desist order for illegal diversions, such techniques set a high bar for enforcement and fail to recover enforcement costs.

The Delta Vision Committee Implementation Report (AKA the Chrisman Report, December 2008), while not commenting on this precise set of penalties and enforcement authorities, called

for legislation to enhance and expand the SWRCB's water rights administrative accountability. These recommendations do not adversely affect the current water right priority system, including area-of-origin priorities, but rather strengthen the current administrative system. As the Chrisman Report suggested, "appropriate enforcement will protect existing water rights." This proposal would give SWRCB authority to take actions to make the water rights system work for all water users and the environment, including:

- better enforcement of existing water diversion/use reporting requirements
- SWRCB authority to start an adjudication of water rights on a stream in response to a conflict or environmental problem
- connection between illegal diversions and economic values

Recent Changes: This part of SB X7 1 deletes the provisions that received the most criticism – SWRCB authority for interim relief and expanded authority for cease-and-desist orders. These deletions, however, do not eliminate the board's existing authority to issue cease-and-desist orders. The amendments also add provisions for a bill that received broad-based support this year – AB 900 (De Leon) – and would eliminate the reporting exemptions for in-Delta diversions. As the Delta Vision Blue Ribbon Task Force explained, eliminating exemptions for reporting will allow the state to better manage its water resources and one of its most precious natural resources – the Sacramento-San Joaquin Delta.

Summary Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

**SENATE RULES COMMITTEE**

SB 5XXXXXXX

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

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THIRD READING

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Bill No: SB 5XXXXXXX

Author: Steinberg (D)

Amended: 11/2/09

Vote: 21

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**SUBJECT:** Water resources

**SOURCE:** Author

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**DIGEST:** This bill revises water rights enforcement penalties, eliminates exemptions from reporting of water use, provides the State Water Resources Control Board with 25 additional positions for water rights enforcement, and makes an appropriation thereof.

Senate Floor Amendments of 11/2/09 make a clarifying change to trespass provisions.

**ANALYSIS:**

Existing Law

1. Prohibits the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, from being required to pay any fee for the performance of an official service. Existing law exempts from this provision any fee or charge for official services required pursuant to specified provisions of law relating to water use or water quality.
2. Authorizes the State Water Resources Control Board (SWRCB) to investigate al streams, stream systems, lakes, or other bodies of water,

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take testimony relating to the rights to water or the use of water, and ascertain whether water filed upon or attempted to be appropriated is appropriated under the laws of the state. Existing law requires the SWRCB to take appropriate actions to prevent waste or the unreasonable use of water. Under existing law, the SWRCB makes determinations with regard to the availability of recycled water.

3. Authorizes the SWRCB, upon the submission of a petition signed by a claimant to water of any stream system requesting a determination of rights among the claimants to that water, to enter an order granting the petition. After granting the petition, the SWRCB is required to investigate the stream system to gather information necessary to make a determination of the water rights of that stream system.
4. Declares that the diversion or use of water other than as authorized by specified provisions of law is a trespass. Existing law authorizes the administrative imposition of civil liability by the SWRCB for a trespass in an amount not to exceed \$500 for each day in which the trespass occurs. Moneys generated by the imposition of civil liability under these provisions are deposited in the Water Rights fund.
5. Requires, with certain exceptions, each person who divers water after December 31, 1965, to file with the SWRCB a prescribed statement of diversion and use. Existing law requires a statement to include specified information, including, on and after January 1, 2012, monthly records of water diversions. Under existing law, the monthly record requirement does not apply to a surface water diversion with a combined diversion capacity from a natural channel that is less than 50 cubic feet per second or to diverters using siphons in the tidal zone. Existing law subjects a person who makes a material misstatement in connection with the filing of the diversion and use statements to administratively imposed civil penalties in the amount of \$500 for each violation.
6. Authorizes the SWRCB to issue a cease and desist order against a person who is violating, or threatening to violate, certain requirements, including requirements set forth in a decision or order relating to the unauthorized use of water. Any person who violates a cease and desist order may be liable in an amount not to exceed \$1,000 for each day in which the violation occurs. Revenue generated from these penalties is deposited in the Water Rights Fund.

This bill:

1. Increases consequences for not reporting water diversions or use.
  - A. Establishes rebuttable presumption that diversions/use did not occur in certain SWRCB proceedings, but would not apply to diversion/use occurring before January 1, 2009.
  - B. Creates rebuttable presumption that no use occurred in certain SWRCB proceedings, but would not apply to diversion/use occurring before January 1, 2009.
  - C. Raises current additional penalty for unauthorized diversions from 100 percent of amount of fees that would have been collected had that diversion been reported, to 150 percent.
  - D. Authorizes additional penalty for failing to file, or material statements in, statements of diversion and use of 150 percent of the amount of fees that would have been collected.
  - E. Adds a new penalty for violators of monitoring requirements or activities, not to exceed five hundred dollars (\$500) for each day in which the violation occurs.
2. Imposes or increases penalties for violating water rights laws.
  - A. Increases penalties for unauthorized diversion or use to an amount not to exceed the larger of:
    - (1) \$1,000 per day of violation for the first offense; \$5,000 for subsequent offenses.
    - (2) The highest market value of the water, as determined on a regional basis.
  - B. Increases penalties for violating a cease and desist order to the greater of \$1000 per day (first offense)/\$5000 per day (subsequent offenses) or the highest market value of the water diverted or used in violation of the cease and desist order.

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- C. Adds penalty, not to exceed \$500 per day of violation, for any violation of term or condition of a permit, license, certificate, or registration, or any order or regulation adopted by SWRCB to prevent waste or unreasonable use.
  - D. Limits civil liability imposed by superior court to three years before filing of complaint.
- 3. Allows SWRCB, in certain investigations, to order any water diverter or water user to prepare technical or monitoring program reports;
  - 4. Expands list of filing fees, to include: registrations for small domestic use or livestock stockpond use; petitions to change the point of diversion, place of use, or purpose of use of a water right that is not subject to a permit or license to appropriate water; and statements of water diversion and use.
  - 5. Authorizes SWRCB to initiate statutory adjudication to determine rights of various claimants to the water of a stream system under its own motion if after a hearing it finds, based on substantial evidence, that the public interest and necessity will be served by a determination of the rights involved.
  - 6. Deletes exemptions from water diversion/use reporting requirements for Delta diverters.
  - 7. Appropriates approximately \$3.7 million in fee-related funding from the Water Rights Fund to hire 25 additional water rights enforcement personnel at SWRCB.

### A History of Water in California

Water, the lifeblood of the state and its most valuable natural resource, has played a major role in helping shape California's economic growth and landscape since statehood. It has been a very controversial and complex subject and has even led to water wars. In the past, the issue of water related to the problem of transfer because 80 percent of the water is in Northern California with 60 percent of the population in the south. Now the issue facing California policymakers is one of water storage -- both surface and groundwater. In the early years of statehood, miners built miles of flows and ditches in order to divert water to sluice gold out. Miners washed entire

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mountainsides into rivers and streams. The silt deposited in the riverbeds of the Central Valley increased flood risk. As a remedy to rising riverbeds, levees were built very close to the channels to keep water velocity high and scour away the sediment.

Most of the miners turned into farmers and these farmers began using aquifers to irrigate their farmlands. Various investigations, starting in 1873, were done to survey the Central Valley's irrigation needs and development of the Sierras watershed. In 1887, the Wright Act was enacted declaring irrigation a public use and providing for the creation of public irrigation districts with authority to supersede riparian water rights by invoking the right of eminent domain.

In the early 20th century, the metropolitan areas of Los Angeles and San Francisco started experiencing inadequate water supplies due to increased population. In 1908, Los Angeles started construction of the Owens Valley Aqueduct which diverted water from the Owens Valley located in Inyo County. It was finished in 1913. However, this led to what has become known as the Owens Valley Water War. In retaliation for their crops dying, farmers in Owens Valley, in the 1920s, dynamited the aqueduct and its dams. When it became apparent that Southern California needed additional water in the 1930s, the Colorado aqueduct, along with the All-American and Coachella Canals were built and became operational in 1941.

In San Francisco, the growth of its population made them look at places from where to divert water. Between 1901-1902, the City engineers recommended that water be diverted from Hetch-Hetchy Canyon in Yosemite National Park. The United States Department of the Interior rejected a permit to the City for development. In 1906, the great San Francisco earthquake occurred rupturing the City's water supply lines making it difficult to put out the resulting fires. A Bay Cities water company and utility company offered to sell its water rights to the City on the American and Cosumnes Rivers near Lake Tahoe but it was learned the City's officials were to receive kickbacks from the company. In 1908, the United States Department of the Interior reversed its permit decision and granted San Francisco the right to develop Hetch-Hetchy. In 1909, when President Taft took office, the permit was rescinded. However, the United States Congress, in 1913, passed the Raker Act granting the City the Hetch-Hetchy Canyon and the first water did not reach San Francisco until 1934. At the present time, there is a movement to have Congress restore the Hetch Hetchy Canyon as it was before the diversion of water took place.

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In 1928, the voters passed ACA 27 (Crittenden), at the general election, which declared that the general welfare requires water resources be beneficially used, and waste or unreasonable use or unreasonable method of use be prevented, and required conservation for the public welfare. It preserved to the riparian owner all the water to which he or she may be entitled for beneficial use by reasonable method, but required that the unwarranted and needless waste of water shall be prevented. In 1931, the Legislature passed the County of Origin law which prohibited the draining of one area's water supply for the sake of another.

In the 1930s, major developments were taken to provide for the transfer of northern water to the south. The Legislature passed, in 1933, the Central Valley Act authorizing a \$170 million bond which was approved by the voters in a special December 19, 1933 election. However, due to the Depression, the bonds were unmarketable and the federal government had to take over the project as a public works project and construction started in 1935.

In the 1940s, outbreaks of waterborne diseases, degradation of fishing and recreational water and war time industrial development and population growth prompted water pollution problems. In 1949, in response to these problems the Legislature passed the Dickey Water Pollution Act which created the State Water Pollution Control Board to set statewide policy for pollution control and coordinating the actions of those state agencies and political subdivisions of the state in controlling water pollution. It established nine regional water pollution control boards located in each of the major California watersheds to oversee and enforce the state's pollution abatement program. The state board was renamed the State Water Quality Control Board. In 1969, the Legislature enacted the Porter-Cologne Water Quality Control Act which became recognized as one of the nation's toughest pieces of anti-pollution legislation and was influential in the passage, on the federal level, of the Federal Water Pollution Control Act Amendments of 1972 known as the Clean Water Act. The State Water Resources Control Board is now the entity which is concerned with water pollution.

In 1956, the Legislature, at a special session called by Governor Goodwin J. Knight, created the Department of Water Resources to develop a state water plan. In 1957, the plan was completed which included a system of reservoirs, aqueducts, pumping and power plants to transport water from the

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north to the south. In 1959, the Legislature enacted, and Governor Pat Brown signed, the Burns-Porter Act providing initial funding of \$1.75 billion in general obligation bonds, and placed it on the 1960 ballot. Compromises were reached in order for the Burns-Porter Act to become law. The north counties were assured that water would be available for future projects and \$130 million of the \$1.75 billion was earmarked for these projects. The County of Origin and Watershed of Origin Acts were reaffirmed by Burns-Porter. Delta water users were ensured their water uses and that good water quality for all purposes were available with the passage of the Delta Protection Act. For Southern California, the Burns-Porter Act required that the state not impose contracts for the sale and delivery of project water during the lifetime of the bonds. The voters approved the California Water Resources Development Bond (Burns-Porter) Act by a 51.5 percent to 48.5 percent margin at the 1960 General Election. The California Water Project now includes the following facilities and projects: Upper Feather River Project, Oroville Reservoir, North Bay Aqueduct, South Bay Aqueduct, San Luis Reservoir, Pacheco Pass Aqueduct, San Joaquin Valley-Southern California Aqueduct, and the Coastal Aqueduct. The next issue of water was the building of a Peripheral Canal as part of the State Water Project. Construction of such a Canal has been proposed, since 1965, to move Sacramento River water through the eastern delta to the delta pumping plant. The Canal is to permit the release of high quality water into the main channels of the delta. These releases are expected to improve water quality in the channels, protect fisheries, flush lower quality waters from the delta and reduce the intrusion of sea water from the San Francisco Bay into the delta. The Canal would permit additional high quality water to be pumped from the delta to meet the state's contract commitments to water users under the State Water Project.

In 1980, the Legislature enacted SB 200 (Ayala) to expand the State Water Project, to specifically authorize construction of the Peripheral Canal, and to establish policy for operating conditions in the delta. Constitutional initiatives qualified for the ballot by environmentalists requiring constitutional guarantees against placing claims on the north coast rivers and providing strict guarantees for the delta and San Francisco water quality. The voters passed Proposition 8 tying approval of the Peripheral Canal to these environmental restrictions by 53.3 percent to 46.2 percent. In late 1982, a referendum qualified for the June 1982 ballot to overturn SB 200, which passed 62 percent to 38 percent.



In 1988, SB 34 (Boatwright) was enacted providing for the Delta Flood Protection Fund creating a delta levee maintenance program pursuant to which a local agency may request reimbursement for costs incurred in connection with the maintenance or improvement of project or non-project levees in the Sacramento-San Joaquin Delta. It provided \$120 million over 10 years. In 1992, the Johnston-Baker-Andal-Boatwright Delta Protection Act became law mandating the designation of primary and secondary zones within the legal definition of the delta, creating a Delta Protection Commission, and completion of a land use and resource management plan for the primary zone. In 2000, the CalFed Bay-Delta Program published a plan to fix the delta water problems and address its major water challenges over the next 30 years. DWR assumed a leading role in the implementation of the CalFed plan, including programs related to water storage, delta conveyance, delta levee system integrity, watershed management, water use efficiency, and water quality.

Hurricane Katrina, in 2005, prompted the Legislature and Governor to come up with a compromise to fix various infrastructure problems in the state--water being one. The Legislature and the Governor enacted AB 140, the Preparedness and Flood Prevention Disaster Bond Act of 2004, which became Proposition 1E on the 2006 General Election ballot and the voters passed. The bond act provided \$4.09 billion in general obligation bonds for the rebuilding and repairs of California's most vulnerable flood control structures to protect homes and prevent loss of life from flood-related disasters, including levee failure, flash floods, and mudslides and to protect California's drinking water supply system by rebuilding levees that are vulnerable to catastrophes and storms.

On September 11, 2007, the Governor called a special session to protect and restore the Sacramento-San Joaquin Delta while also improving the reliability and quality of water supplies from that estuary and to address the short-term and long-term improvement of California's water management system.

The Governor proposed a \$9 billion water infrastructure plan including \$600 million from the bond measures passed by the voters in 2006 to relieve pressure on deltas from environmental concerns and to respond to the federal court ruling that will reduce water deliveries to Southern California; \$5.6 billion in water storage (\$5.1 billion for surface and \$500,000 for groundwater); \$1.9 billion for delta restoration and water supply reliability; \$1 billion in grants for conservation and regional water projects; and \$500



million in grants for specified watersheds throughout the state. The Governor also called for a new Peripheral Canal: SB 3XX and 4XX (Cogdill) and AB 4X (Villines).

Senator Perata introduced SB 2XX allowing a \$6.5 billion general obligation bond for water supply, reliability, delta sustainability, conservation and pollution cleanup, protection against invasive species, groundwater protection, water quality, and water recycling. SB 2XX was voted on by the Senate and was defeated on a party line vote.

The major difference between the two water plans is that the Governor provides for the building of surface storage facilities (dams) while SB 2XX includes \$2 billion for regional grants to improve water supply reliability but does not exclude dams as long as that is the fastest, cheapest and most efficient way to increase water supply. SB 2XX emphasizes regional decision making rather than investing control in DWR. SB 2XX sets up a competitive process in each region to fund the projects that provide the most water at the lowest cost.

On August 31, 2007, Federal Court Judge Oliver Wagner ruled to restrict water deliveries from the Sacramento-San Joaquin Delta to the Bay Area, Central Valley and Southern California due to the endangerment of the endangered species delta smelt which has made the water supply issue more complex.

In the 2007 Regular Session, the Legislature enacted and the Governor did sign into law legislation which enhances flood protection in California: SB 5 (Machado) requiring the Department of Water Resources and the Central Valley Flood Protection Board to prepare and adopt a Central Valley Flood Protection Plan by 2012, and establishing flood protection requirements for local land-use decisions consistent with the Central Valley Protection Plan; SB 17 (Florez) reforming and removing the Reclamation Board to the Central Valley Flood Protection Board and improving proficiency, and requiring development of the State Plan of Flood Control for the Central Valley; AB 70 (Jones) providing, generally, that a city or county may be required to contribute a fair and reasonable share of the increased flood liability caused by its unreasonable approval of the developments following the failure of a state flood control project; AB 156 (Laird) enhancing information and planning related to Central Valley flood protection and the improvement of the system by the Department of Water Resources and local agencies; AB 162 (Wolk) requiring cities and counties to address flood-

related matters in the land use, conservation, safety , and housing elements of their general plans; AB 5 (Wolk) making clarifying and technical changes to the preceding bills.

### The Delta

For several years, the Delta has suffered a crisis: ecosystem, water supply, levee stability, water quality, policy, program, and litigation. In June 2004, a privately owned levee failed and the State spent nearly \$100 million to fix it and save an island whose property value was far less. In August 2005, the Department of Fish & Game reported a trend showing severe decline in the Delta fishery. In 2006, the Legislature reorganized Delta programs and funding under the Resources Agency Secretary. In 2007, a federal judge, acting under the federal Endangered Species Act, declared illegal certain federal biological opinions about near-extinct fish and restricted water exports from the Delta, to the San Francisco Bay Area, the San Joaquin Valley and Southern California. The Governor shortly thereafter called the Legislature into an extraordinary session on water.

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) of 2006 required a cabinet committee to present recommendations for a Delta 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 the recommendations to the Legislature on January 3, 2009.

The Delta Vision Blue Ribbon Task Force identified seven goals which they felt virtually everyone could agree on to bring forward a comprehensive water plan for the state:

1. Delta restoration must be founded on the co-equal goals of water supply reliability and ecosystem restoration.
2. Recognize and enhance the unique cultural, recreational, and agricultural values of the Delta as an evolving place.
3. Restore the Delta ecosystem as the heart of a healthy estuary.
4. Promote statewide water conservation, efficiency and sustainable use.

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5. Build facilities to improve the existing water conveyance system and expand statewide storage
6. Reduce the 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, scientific support and secure funding to achieve these goals.

The Governor and Senator Dianne Feinstein in July of 2009 reached an agreement to propose a \$9.3 billion water bond.

**FISCAL EFFECT:** Appropriation: Yes Fiscal Com.: Yes Local: No

JJA:cm 11/2/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*

**SENATE RULES COMMITTEE**

**SB 5XXXXXXX**

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

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**THIRD READING**

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Bill No: SB 5XXXXXXX

Author: Steinberg (D)

Amended: 11/4/09

Vote: 21

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**SUBJECT:** Water resources

**SOURCE:** Author

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**DIGEST:** This bill revises water rights enforcement penalties, eliminates exemptions from reporting of water use, provides the State Water Resources Control Board with 25 additional positions for water rights enforcement, and makes an appropriation thereof.

**ANALYSIS:**

**Existing Law**

1. Prohibits the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, from being required to pay any fee for the performance of an official service. Existing law exempts from this provision any fee or charge for official services required pursuant to specified provisions of law relating to water use or water quality.
2. Authorizes the State Water Resources Control Board (SWRCB) to investigate all streams, stream systems, lakes, or other bodies of water, take testimony relating to the rights to water or the use of water, and ascertain whether water filed upon or attempted to be appropriated is appropriated under the laws of the state. Existing law requires the

**CONTINUED**

SWRCB to take appropriate actions to prevent waste or the unreasonable use of water. Under existing law, the SWRCB makes determinations with regard to the availability of recycled water.

3. Authorizes the SWRCB, upon the submission of a petition signed by a claimant to water of any stream system requesting a determination of rights among the claimants to that water, to enter an order granting the petition. After granting the petition, the SWRCB is required to investigate the stream system to gather information necessary to make a determination of the water rights of that stream system.
4. Declares that the diversion or use of water other than as authorized by specified provisions of law is a trespass. Existing law authorizes the administrative imposition of civil liability by the SWRCB for a trespass in an amount not to exceed \$500 for each day in which the trespass occurs. Moneys generated by the imposition of civil liability under these provisions are deposited in the Water Rights fund.
5. Requires, with certain exceptions, each person who divers water after December 31, 1965, to file with the SWRCB a prescribed statement of diversion and use. Existing law requires a statement to include specified information, including, on and after January 1, 2012, monthly records of water diversions. Under existing law, the monthly record requirement does not apply to a surface water diversion with a combined diversion capacity from a natural channel that is less than 50 cubic feet per second or to diverters using siphons in the tidal zone. Existing law subjects a person who makes a material misstatement in connection with the filing of the diversion and use statements to administratively imposed civil penalties in the amount of \$500 for each violation.
6. Authorizes the SWRCB to issue a cease and desist order against a person who is violating, or threatening to violate, certain requirements, including requirements set forth in a decision or order relating to the unauthorized use of water. Any person who violates a cease and desist order may be liable in an amount not to exceed \$1,000 for each day in which the violation occurs. Revenue generated from these penalties is deposited in the Water Rights Fund.

This bill:

1. Increases consequences for not reporting water diversions or use.

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- A. Establishes rebuttable presumption that diversions/use did not occur in certain SWRCB proceedings, but would not apply to diversion/use occurring before January 1, 2009.
  - B. Creates rebuttable presumption that no use occurred in certain SWRCB proceedings, but would not apply to diversion/use occurring before January 1, 2009.
  - C. Raises current additional penalty for unauthorized diversions from 100 percent of amount of fees that would have been collected had that diversion been reported, to 150 percent.
  - D. Authorizes additional penalty for failing to file, or material statements in, statements of diversion and use of 150 percent of the amount of fees that would have been collected.
  - E. Adds a new penalty for violators of monitoring requirements or activities, not to exceed five hundred dollars (\$500) for each day in which the violation occurs.
2. Imposes or increases penalties for violating water rights laws.
- A. Increases penalties for unauthorized diversion or use to an amount not to exceed the larger of:
    - (1) \$1,000 per day of violation for the first offense; \$5,000 for subsequent offenses.
    - (2) The highest market value of the water, as determined on a regional basis.
  - B. Increases penalties for violating a cease and desist order to the greater of \$1000 per day (first offense)/\$5000 per day (subsequent offenses) or the highest market value of the water diverted or used in violation of the cease and desist order.
  - C. Adds penalty, not to exceed \$500 per day of violation, for any violation of term or condition of a permit, license, certificate, or registration, or any order or regulation adopted by SWRCB to prevent waste or unreasonable use.

- D. Limits civil liability imposed by superior court to three years before filing of complaint.
3. Allows SWRCB, in certain investigations, to order any water diverter or water user to prepare technical or monitoring program reports;
  4. Expands list of filing fees, to include: registrations for small domestic use or livestock stockpond use; petitions to change the point of diversion, place of use, or purpose of use of a water right that is not subject to a permit or license to appropriate water; and statements of water diversion and use.
  5. Establishes a rebuttable presumption, in specified circumstances in any proceeding before the SWRCB in which it is alleged that an appropriate right has ceased or is subject to prescribed action, that no use required to be included in a statement of diversion and use occurred unless that use is included in a statement that is submitted to the SWRCB within a specified time period.
  6. Deletes exemptions from water diversion/use reporting requirements for Delta diverters.
  7. Appropriates approximately \$3.7 million in fee-related funding from the Water Rights Fund to hire 25 additional water rights enforcement personnel at SWRCB.

### A History of Water in California

Water, the lifeblood of the state and its most valuable natural resource, has played a major role in helping shape California's economic growth and landscape since statehood. It has been a very controversial and complex subject and has even led to water wars. In the past, the issue of water related to the problem of transfer because 80 percent of the water is in Northern California with 60 percent of the population in the south. Now the issue facing California policymakers is one of water storage -- both surface and groundwater. In the early years of statehood, miners built miles of flows and ditches in order to divert water to sluice gold out. Miners washed entire mountainsides into rivers and streams. The silt deposited in the riverbeds of the Central Valley increased flood risk. As a remedy to rising riverbeds,

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levees were built very close to the channels to keep water velocity high and scour away the sediment.

Most of the miners turned into farmers and these farmers began using aquifers to irrigate their farmlands. Various investigations, starting in 1873, were done to survey the Central Valley's irrigation needs and development of the Sierras watershed. In 1887, the Wright Act was enacted declaring irrigation a public use and providing for the creation of public irrigation districts with authority to supersede riparian water rights by invoking the right of eminent domain.

In the early 20th century, the metropolitan areas of Los Angeles and San Francisco started experiencing inadequate water supplies due to increased population. In 1908, Los Angeles started construction of the Owens Valley Aqueduct which diverted water from the Owens Valley located in Inyo County. It was finished in 1913. However, this led to what has become known as the Owens Valley Water War. In retaliation for their crops dying, farmers in Owens Valley, in the 1920s, dynamited the aqueduct and its dams. When it became apparent that Southern California needed additional water in the 1930s, the Colorado aqueduct, along with the All-American and Coachella Canals were built and became operational in 1941.

In San Francisco, the growth of its population made them look at places from where to divert water. Between 1901-1902, the City engineers recommended that water be diverted from Hetch-Hetchy Canyon in Yosemite National Park. The United States Department of the Interior rejected a permit to the City for development. In 1906, the great San Francisco earthquake occurred rupturing the City's water supply lines making it difficult to put out the resulting fires. A Bay Cities water company and utility company offered to sell its water rights to the City on the American and Cosumnes Rivers near Lake Tahoe but it was learned the City's officials were to receive kickbacks from the company. In 1908, the United States Department of the Interior reversed its permit decision and granted San Francisco the right to develop Hetch-Hetchy. In 1909, when President Taft took office, the permit was rescinded. However, the United States Congress, in 1913, passed the Raker Act granting the City the Hetch-Hetchy Canyon and the first water did not reach San Francisco until 1934. At the present time, there is a movement to have Congress restore the Hetch Hetchy Canyon as it was before the diversion of water took place.

In 1928, the voters passed ACA 27 (Crittenden), at the general election, which declared that the general welfare requires water resources be beneficially used, and waste or unreasonable use or unreasonable method of use be prevented, and required conservation for the public welfare. It preserved to the riparian owner all the water to which he or she may be entitled for beneficial use by reasonable method, but required that the unwarranted and needless waste of water shall be prevented. In 1931, the Legislature passed the County of Origin law which prohibited the draining of one area's water supply for the sake of another.

In the 1930s, major developments were taken to provide for the transfer of northern water to the south. The Legislature passed, in 1933, the Central Valley Act authorizing a \$170 million bond which was approved by the voters in a special December 19, 1933 election. However, due to the Depression, the bonds were unmarketable and the federal government had to take over the project as a public works project and construction started in 1935.

In the 1940s, outbreaks of waterborne diseases, degradation of fishing and recreational water and war time industrial development and population growth prompted water pollution problems. In 1949, in response to these problems the Legislature passed the Dickey Water Pollution Act which created the State Water Pollution Control Board to set statewide policy for pollution control and coordinating the actions of those state agencies and political subdivisions of the state in controlling water pollution. It established nine regional water pollution control boards located in each of the major California watersheds to oversee and enforce the state's pollution abatement program. The state board was renamed the State Water Quality Control Board. In 1969, the Legislature enacted the Porter-Cologne Water Quality Control Act which became recognized as one of the nation's toughest pieces of anti-pollution legislation and was influential in the passage, on the federal level, of the Federal Water Pollution Control Act Amendments of 1972 known as the Clean Water Act. The State Water Resources Control Board is now the entity which is concerned with water pollution.

In 1956, the Legislature, at a special session called by Governor Goodwin J. Knight, created the Department of Water Resources to develop a state water plan. In 1957, the plan was completed which included a system of reservoirs, aqueducts, pumping and power plants to transport water from the north to the south. In 1959, the Legislature enacted, and Governor Pat

Brown signed, the Burns-Porter Act providing initial funding of \$1.75 billion in general obligation bonds, and placed it on the 1960 ballot. Compromises were reached in order for the Burns-Porter Act to become law. The north counties were assured that water would be available for future projects and \$130 million of the \$1.75 billion was earmarked for these projects. The County of Origin and Watershed of Origin Acts were reaffirmed by Burns-Porter. Delta water users were ensured their water uses and that good water quality for all purposes were available with the passage of the Delta Protection Act. For Southern California, the Burns-Porter Act required that the state not impose contracts for the sale and delivery of project water during the lifetime of the bonds. The voters approved the California Water Resources Development Bond (Burns-Porter) Act by a 51.5 percent to 48.5 percent margin at the 1960 General Election. The California Water Project now includes the following facilities and projects: Upper Feather River Project, Oroville Reservoir, North Bay Aqueduct, South Bay Aqueduct, San Luis Reservoir, Pacheco Pass Aqueduct, San Joaquin Valley-Southern California Aqueduct, and the Coastal Aqueduct. The next issue of water was the building of a Peripheral Canal as part of the State Water Project. Construction of such a Canal has been proposed, since 1965, to move Sacramento River water through the eastern delta to the delta pumping plant. The Canal is to permit the release of high quality water into the main channels of the delta. These releases are expected to improve water quality in the channels, protect fisheries, flush lower quality waters from the delta and reduce the intrusion of sea water from the San Francisco Bay into the delta. The Canal would permit additional high quality water to be pumped from the delta to meet the state's contract commitments to water users under the State Water Project.

In 1980, the Legislature enacted SB 200 (Ayala) to expand the State Water Project, to specifically authorize construction of the Peripheral Canal, and to establish policy for operating conditions in the delta. Constitutional initiatives qualified for the ballot by environmentalists requiring constitutional guarantees against placing claims on the north coast rivers and providing strict guarantees for the delta and San Francisco water quality. The voters passed Proposition 8 tying approval of the Peripheral Canal to these environmental restrictions by 53.3 percent to 46.2 percent. In late 1982, a referendum qualified for the June 1982 ballot to overturn SB 200, which passed 62 percent to 38 percent.

In 1988, SB 34 (Boatwright) was enacted providing for the Delta Flood Protection Fund creating a delta levee maintenance program pursuant to

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which a local agency may request reimbursement for costs incurred in connection with the maintenance or improvement of project or non-project levees in the Sacramento-San Joaquin Delta. It provided \$120 million over 10 years. In 1992, the Johnston-Baker-Andal-Boatwright Delta Protection Act became law mandating the designation of primary and secondary zones within the legal definition of the delta, creating a Delta Protection Commission, and completion of a land use and resource management plan for the primary zone. In 2000, the CalFed Bay-Delta Program published a plan to fix the delta water problems and address its major water challenges over the next 30 years. DWR assumed a leading role in the implementation of the CalFed plan, including programs related to water storage, delta conveyance, delta levee system integrity, watershed management, water use efficiency, and water quality.

Hurricane Katrina, in 2005, prompted the Legislature and Governor to come up with a compromise to fix various infrastructure problems in the state--water being one. The Legislature and the Governor enacted AB 140, the Preparedness and Flood Prevention Disaster Bond Act of 2004, which became Proposition 1E on the 2006 General Election ballot and the voters passed. The bond act provided \$4.09 billion in general obligation bonds for the rebuilding and repairs of California's most vulnerable flood control structures to protect homes and prevent loss of life from flood-related disasters, including levee failure, flash floods, and mudslides and to protect California's drinking water supply system by rebuilding levees that are vulnerable to catastrophes and storms.

On September 11, 2007, the Governor called a special session to protect and restore the Sacramento-San Joaquin Delta while also improving the reliability and quality of water supplies from that estuary and to address the short-term and long-term improvement of California's water management system.

The Governor proposed a \$9 billion water infrastructure plan including \$600 million from the bond measures passed by the voters in 2006 to relieve pressure on deltas from environmental concerns and to respond to the federal court ruling that will reduce water deliveries to Southern California; \$5.6 billion in water storage (\$5.1 billion for surface and \$500,000 for groundwater); \$1.9 billion for delta restoration and water supply reliability; \$1 billion in grants for conservation and regional water projects; and \$500 million in grants for specified watersheds throughout the state. The

Governor also called for a new Peripheral Canal: SB 3XX and 4XX (Cogdill) and AB 4X (Villines).

Senator Perata introduced SB 2XX allowing a \$6.5 billion general obligation bond for water supply, reliability, delta sustainability, conservation and pollution cleanup, protection against invasive species, groundwater protection, water quality, and water recycling. SB 2XX was voted on by the Senate and was defeated on a party line vote.

The major difference between the two water plans is that the Governor provides for the building of surface storage facilities (dams) while SB 2XX includes \$2 billion for regional grants to improve water supply reliability but does not exclude dams as long as that is the fastest, cheapest and most efficient way to increase water supply. SB 2XX emphasizes regional decision making rather than investing control in DWR. SB 2XX sets up a competitive process in each region to fund the projects that provide the most water at the lowest cost.

On August 31, 2007, Federal Court Judge Oliver Wagner ruled to restrict water deliveries from the Sacramento-San Joaquin Delta to the Bay Area, Central Valley and Southern California due to the endangerment of the endangered species delta smelt which has made the water supply issue more complex.

In the 2007 Regular Session, the Legislature enacted and the Governor did sign into law legislation which enhances flood protection in California: SB 5 (Machado) requiring the Department of Water Resources and the Central Valley Flood Protection Board to prepare and adopt a Central Valley Flood Protection Plan by 2012, and establishing flood protection requirements for local land-use decisions consistent with the Central Valley Protection Plan; SB 17 (Florez) reforming and removing the Reclamation Board to the Central Valley Flood Protection Board and improving proficiency, and requiring development of the State Plan of Flood Control for the Central Valley; AB 70 (Jones) providing, generally, that a city or county may be required to contribute a fair and reasonable share of the increased flood liability caused by its unreasonable approval of the developments following the failure of a state flood control project; AB 156 (Laird) enhancing information and planning related to Central Valley flood protection and the improvement of the system by the Department of Water Resources and local agencies; AB 162 (Wolk) requiring cities and counties to address flood-related matters in the land use, conservation, safety , and housing elements



of their general plans; AB 5 (Wolk) making clarifying and technical changes to the preceding bills.

### The Delta

For several years, the Delta has suffered a crisis: ecosystem, water supply, levee stability, water quality, policy, program, and litigation. In June 2004, a privately owned levee failed and the State spent nearly \$100 million to fix it and save an island whose property value was far less. In August 2005, the Department of Fish & Game reported a trend showing severe decline in the Delta fishery. In 2006, the Legislature reorganized Delta programs and funding under the Resources Agency Secretary. In 2007, a federal judge, acting under the federal Endangered Species Act, declared illegal certain federal biological opinions about near-extinct fish and restricted water exports from the Delta, to the San Francisco Bay Area, the San Joaquin Valley and Southern California. The Governor shortly thereafter called the Legislature into an extraordinary session on water.

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) of 2006 required a cabinet committee to present recommendations for a Delta 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 the recommendations to the Legislature on January 3, 2009.

The Delta Vision Blue Ribbon Task Force identified seven goals which they felt virtually everyone could agree on to bring forward a comprehensive water plan for the state:

1. Delta restoration must be founded on the co-equal goals of water supply reliability and ecosystem restoration.
2. Recognize and enhance the unique cultural, recreational, and agricultural values of the Delta as an evolving place.
3. Restore the Delta ecosystem as the heart of a healthy estuary.
4. Promote statewide water conservation, efficiency and sustainable use.

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5. Build facilities to improve the existing water conveyance system and expand statewide storage
6. Reduce the 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, scientific support and secure funding to achieve these goals.

The Governor and Senator Dianne Feinstein in July of 2009 reached an agreement to propose a \$9.3 billion water bond.

**FISCAL EFFECT:** Appropriation: Yes Fiscal Com.: Yes Local: No

JJA:cm 11/4/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*



**SENATE RULES COMMITTEE**

SB 8XXXXXXXX

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

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THIRD READING

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Bill No: SB 8XXXXXXXX

Author: Steinberg (D)

Amended: As introduced

Vote: 21

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**SUBJECT:** Water

**SOURCE:** Author

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**DIGEST:** This bill appropriates \$546 million from various funds authorized by Proposition 84 to (1) support projects that reduce dependence on the Delta for water supply, (2) reduce the potential for levee failures that would jeopardize water conveyance, (3) provide grants for storm water projects, and (4) provide grants to local agencies to support the development and implementation of natural community conservation plans in or around the Delta. This bill is contingent upon the enactment SB 1XXXXXXXX (Simitian and Steinberg), SB 5XXXXXXXX (Steinberg and Pavley), SB 6XXXXXXXX (Steinberg and Pavley), and SB 7XXXXXXXX (Steinberg).

**ANALYSIS:** Proposition 84 authorized \$5.388 billion in general obligation bonds for water quality, safety and supply, flood control, natural resource protection, and park improvements.

This bill appropriates \$546 million from various funds authorized by Proposition 84 as follows:

1. \$250 million for integrated regional water management grants and expenditures for programs and projects that will reduce dependence on the Delta for water supply.

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2. \$202 million for flood control projects in the Delta designed to reduce the potential for levee failures which would jeopardize water conveyance.
3. \$70 million for grants from stormwater flood management projects.
4. \$24 million for grants to local agencies to implement, or assist in the establishment of, natural community conservation plans for areas in or around the Delta.

In addition, this bill is contingent upon the enactment of SB 1XXXXXXX (Simitian and Steinberg), SB 5XXXXXXX (Steinberg and Pavley), SB 6XXXXXXX (Steinberg and Pavley), and SB 7XXXXXXX (Steinberg).

### A History of Water

Water, the lifeblood of the state and its most valuable natural resource, has played a major role in helping shape California's economic growth and landscape since statehood. It has been a very controversial and complex subject and has even led to water wars. In the past, the issue of water related to the problem of transfer because 80 percent of the water is in Northern California with 60 percent of the population in the south. Now the issue facing California policymakers is one of water storage -- both surface and groundwater. In the early years of statehood, miners built miles of flows and ditches in order to divert water to sluice gold out. Miners washed entire mountainsides into rivers and streams. The silt deposited in the riverbeds of the Central Valley increased flood risk. As a remedy to rising riverbeds, levees were built very close to the channels to keep water velocity high and scour away the sediment.

Most of the miners turned into farmers and these farmers began using aquifers to irrigate their farmlands. Various investigations, starting in 1873, were done to survey the Central Valley's irrigation needs and development of the Sierras watershed. In 1887, the Wright Act was enacted declaring irrigation a public use and providing for the creation of public irrigation districts with authority to supersede riparian water rights by invoking the right of eminent domain.

In the early 20th century, the metropolitan areas of Los Angeles and San Francisco started experiencing inadequate water supplies due to increased population. In 1908, Los Angeles started construction of the Owens Valley Aqueduct which diverted water from the Owens Valley located in Inyo

County. It was finished in 1913. However, this led to what has become known as the Owens Valley Water War. In retaliation for their crops dying, farmers in Owens Valley, in the 1920s, dynamited the aqueduct and its dams. When it became apparent that Southern California needed additional water in the 1930s, the Colorado aqueduct, along with the All-American and Coachella Canals were built and became operational in 1941.

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In the 1930s, major developments were taken to provide for the transfer of northern water to the south. The Legislature passed, in 1933, the Central Valley Act authorizing a \$170 million bond which was approved by the voters in a special December 19, 1933 election. However, due to the Depression, the bonds were unmarketable and the federal government had to

take over the project as a public works project and construction started in 1935.

In the 1940s, outbreaks of waterborne diseases, degradation of fishing and recreational water and war time industrial development and population growth prompted water pollution problems. In 1949, in response to these problems the Legislature passed the Dickey Water Pollution Act which created the State Water Pollution Control Board to set statewide policy for pollution control and coordinating the actions of those state agencies and political subdivisions of the state in controlling water pollution. It established nine regional water pollution control boards located in each of the major California watersheds to oversee and enforce the state's pollution abatement program. The state board was renamed the State Water Quality Control Board. In 1969, the Legislature enacted the Porter-Cologne Water Quality Control Act which became recognized as one of the nation's toughest pieces of anti-pollution legislation and was influential in the passage, on the federal level, of the Federal Water Pollution Control Act Amendments of 1972 known as the Clean Water Act. The State Water Resources Control Board is now the entity which is concerned with water pollution.

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South Bay Aqueduct, San Luis Reservoir, Pacheco Pass Aqueduct, San Joaquin Valley-Southern California Aqueduct, and the Coastal Aqueduct. The next issue of water was the building of a Peripheral Canal as part of the State Water Project. Construction of such a Canal has been proposed, since 1965, to move Sacramento River water through the eastern delta to the delta pumping plant. The Canal is to permit the release of high quality water into the main channels of the delta. These releases are expected to improve water quality in the channels, protect fisheries, flush lower quality waters from the delta and reduce the intrusion of sea water from the San Francisco Bay into the delta. The Canal would permit additional high quality water to be pumped from the delta to meet the state's contract commitments to water users under the State Water Project.

In 1980, the Legislature enacted SB 200 (Ayala) to expand the State Water Project, to specifically authorize construction of the Peripheral Canal, and to establish policy for operating conditions in the delta. Constitutional initiatives qualified for the ballot by environmentalists requiring constitutional guarantees against placing claims on the north coast rivers and providing strict guarantees for the delta and San Francisco water quality. The voters passed Proposition 8 tying approval of the Peripheral Canal to these environmental restrictions by 53.3 percent to 46.2 percent. In late 1982, a referendum qualified for the June 1982 ballot to overturn SB 200, which passed 62 percent to 38 percent.

In 1988, SB 34 (Boatwright) was enacted providing for the Delta Flood Protection Fund creating a delta levee maintenance program pursuant to which a local agency may request reimbursement for costs incurred in connection with the maintenance or improvement of project or non-project levees in the Sacramento-San Joaquin Delta. It provided \$120 million over 10 years. In 1992, the Johnston-Baker-Andal-Boatwright Delta Protection Act became law mandating the designation of primary and secondary zones within the legal definition of the delta, creating a Delta Protection Commission, and completion of a land use and resource management plan for the primary zone. In 2000, the CalFed Bay-Delta Program published a plan to fix the delta water problems and address its major water challenges over the next 30 years. DWR assumed a leading role in the implementation of the CalFed plan, including programs related to water storage, delta conveyance, delta levee system integrity, watershed management, water use efficiency, and water quality.



Hurricane Katrina, in 2005, prompted the Legislature and Governor to come up with a compromise to fix various infrastructure problems in the state--water being one. The Legislature and the Governor enacted AB 140, the Preparedness and Flood Prevention Disaster Bond Act of 2004, which became Proposition 1E on the 2006 General Election ballot and the voters passed. The bond act provided \$4.09 in general obligation bonds for the rebuilding and repairs of California's most vulnerable flood control structures to protect homes and prevent loss of life from flood-related disasters, including levee failure, flash floods, and mudslides and to protect California's drinking water supply system by rebuilding levees that are vulnerable to catastrophes and storms.

On September 11, 2007, the Governor called a special session to protect and restore the Sacramento-San Joaquin Delta while also improving the reliability and quality of water supplies from that estuary and to address the short-term and long-term improvement of California's water management system.

The Governor proposed a \$9 billion water infrastructure plan including \$600 million from the bond measures passed by the voters in 2006 to relieve pressure on deltas from environmental concerns and to respond to the federal court ruling that will reduce water deliveries to Southern California; \$5.6 billion in water storage (\$5.1 billion for surface and \$500,000 for groundwater); \$1.9 billion for delta restoration and water supply reliability; \$1 billion in grants for conservation and regional water projects; and \$500 million in grants for specified watersheds throughout the state. The Governor also called for a new Peripheral Canal: SB 3XX and 4XX (Cogdill) and AB 4X (Villines). All these bills died when the extraordinary session was adjourned.

Senator Perata introduced SB 2XX allowing a \$6.5 billion general obligation bond for water supply, reliability, delta sustainability, conservation and pollution cleanup, protection against invasive species, groundwater protection, water quality, and water recycling. SB 2XX was voted on by the Senate and was defeated on a party line vote.

The major difference between the two water plans was that the Governor provided for the building of surface storage facilities (dams) while SB 2XX included \$2 billion for regional grants to improve water supply reliability but did not exclude dams as long as that is the fastest, cheapest and most efficient way to increase water supply. SB 2XX emphasized regional

decision making rather than investing control in DWR. SB 2XX would have set up a competitive process in each region to fund the projects that provide the most water at the lowest cost.

On August 31, 2007, Federal Court Judge Oliver Wagner ruled to restrict water deliveries from the Sacramento-San Joaquin Delta to the Bay Area, Central Valley and Southern California due to the endangerment of the endangered species delta smelt which has made the water supply issue more complex.

In the 2007 Regular Session, the Legislature enacted and the Governor did sign into law legislation which enhances flood protection in California: SB 5 (Machado) requiring the Department of Water Resources and the Central Valley Flood Protection Board to prepare and adopt a Central Valley Flood Protection Plan by 2012, and establishing flood protection requirements for local land-use decisions consistent with the Central Valley Protection Plan; SB 17 (Florez) reforming and removing the Reclamation Board to the Central Valley Flood Protection Board and improving proficiency, and requiring development of the State Plan of Flood Control for the Central Valley; AB 70 (Jones) providing, generally, that a city or county may be required to contribute a fair and reasonable share of the increased flood liability caused by its unreasonable approval of the developments following the failure of a state flood control project; AB 156 (Laird) enhancing information and planning related to Central Valley flood protection and the improvement of the system by the Department of Water Resources and local agencies; AB 162 (Wolk) requiring cities and counties to address flood-related matters in the land use, conservation, safety , and housing elements of their general plans; AB 5 (Wolk) making clarifying and technical changes to the preceding bills.

The Delta Vision Blue Ribbon Task Force identified seven goals which they felt virtually everyone could agree on to bring forward a comprehensive water plan for the state:

1. Delta restoration must be founded on the co-equal goals of water supply reliability and ecosystem restoration.
2. Recognize and enhance the unique cultural, recreational, and agricultural values of the Delta as an evolving place.
3. Restore the Delta ecosystem as the heart of a healthy estuary.

CONTINUED



4. Promote statewide water conservation, efficiency and sustainable use.
5. Build facilities to improve the existing water conveyance system and expand statewide storage
6. Reduce the 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, scientific support and secure funding to achieve these goals.

The Governor and Senator Dianne Feinstein in July of 2009 reached an agreement to propose a \$9.3 billion water bond.

**FISCAL EFFECT:** Appropriation: Yes Fiscal Com.: Yes Local: No

**SUPPORT:** (11/02/09) (Unable to verify at time of writing)

Unknown, because of the many changes in the compromise that have been reached.

**OPPOSITION:** (11/02/09) (Unable to verify at time of writing)

Unknown, because of the many changes in the compromise that have been reached.

JJA:cm 11/3/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

**SENATE RULES COMMITTEE**

SB 8XXXXXXX

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

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THIRD READING

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Bill No: SB 8XXXXXXX

Author: Steinberg (D)

Amended: As introduced

Vote: 21

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PRIOR SENATE VOTE NOT RELEVANT

ASSEMBLY FLOOR: Not available

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**SUBJECT**: Water

**SOURCE**: Author

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**DIGEST**: This bill appropriates \$546 million from various funds authorized by Proposition 84 to (1) support projects that reduce dependence on the Delta for water supply, (2) reduce the potential for levee failures that would jeopardize water conveyance, (3) provide grants for storm water projects, and (4) provide grants to local agencies to support the development and implementation of natural community conservation plans in or around the Delta. This bill is contingent upon the enactment SB 1XXXXXXX (Simitian and Steinberg), SB 6XXXXXXX (Steinberg and Pavley), and SB 7XXXXXXX (Steinberg).

Assembly Amendments revises the existing requirements mandating that certain diverters of surface waters report their diversions to the State Water Board. This bill requires diversions in the Delta to be reported to the State Water Board and provides the State Water Resources Control Board with 25 additional positions for water rights enforcement, and makes an appropriation thereof. (These provisions are contained in the 8/17/09 version of AB 900[De Leon].)

CONTINUED

**ANALYSIS:**

- I. Proposition 84 authorized \$5.388 billion in general obligation bonds for water quality, safety and supply, flood control, natural resource protection, and park improvements.

This bill appropriates \$546 million from various funds authorized by Proposition 84 as follows:

1. \$250 million for integrated regional water management grants and expenditures for programs and projects that will reduce dependence on the Delta for water supply.
2. \$202 million for flood control projects in the Delta designed to reduce the potential for levee failures which would jeopardize water conveyance.
3. \$70 million for grants from stormwater flood management projects.
4. \$24 million for grants to local agencies to implement, or assist in the establishment of, natural community conservation plans for areas in or around the Delta.

In addition, this bill is contingent upon the enactment of SB 1XXXXXXX (Simitian and Steinberg), SB 5XXXXXXX (Steinberg and Pavley), SB 6XXXXXXX (Steinberg and Pavley), and SB 7XXXXXXX (Steinberg).

- II. Under current law, persons who divert surface waters in the state are required to file a statement of diversion and use with the State Water Resources Control Board (SWRCB). There are several exemptions from this requirement in statute, under which persons who divert from a spring located on their property, persons covered by an existing application to divert water, and persons located in the Sacramento-San Joaquin River Delta, are not required to file statements. Current law also requires permit and license holders to report annual water use as a condition of the permit or license.

Under current law, beginning in 2012, statements of diversion are required to include information on monthly diversion rates, with the

exception of diversions with a capacity of less than 50 cubic feet per second and diversions using siphons in the tidal zone of the Delta.

This bill revises the list of water diversions that are exempt from reporting requirements. Under the bill, reportable diversions include:

1. Diversions from a spring that does not flow off a property if the diversion is more than 25 acre-feet per year.
2. Diversions covered by an application on file with the State Water Board (SWB).
3. Diversions from the Delta with a capacity of 10 gallons per minute or more.

In addition, the bill revises the rules regarding the monthly reporting of diversion amounts by eliminating the exemption for diversions in the Delta.

The bill authorizes the SWB to impose civil penalties if diverters fail to file required statements, tamper with a monitoring device, or make material misstatements in connection with the filing of a statement of diversion and use.

The bill authorizes the SWB and the Department of Water Resources to adopt emergency regulations to allow for electronic reporting of specified water use information.

This bill appropriates approximately \$3.7 million in fee-related funding from the Water Rights Fund to hire 25 additional water rights enforcement personnel at the SWRCB.

### A History of Water

Water, the lifeblood of the state and its most valuable natural resource, has played a major role in helping shape California's economic growth and landscape since statehood. It has been a very controversial and complex subject and has even led to water wars. In the past, the issue of water related to the problem of transfer because 80 percent of the water is in Northern California with 60 percent of the population in the south. Now the issue facing California policymakers is one of water storage -- both surface and

CONTINUED

groundwater. In the early years of statehood, miners built miles of flows and ditches in order to divert water to sluice gold out. Miners washed entire mountainsides into rivers and streams. The silt deposited in the riverbeds of the Central Valley increased flood risk. As a remedy to rising riverbeds, levees were built very close to the channels to keep water velocity high and scour away the sediment.

Most of the miners turned into farmers and these farmers began using aquifers to irrigate their farmlands. Various investigations, starting in 1873, were done to survey the Central Valley's irrigation needs and development of the Sierras watershed. In 1887, the Wright Act was enacted declaring irrigation a public use and providing for the creation of public irrigation districts with authority to supersede riparian water rights by invoking the right of eminent domain.

In the early 20th century, the metropolitan areas of Los Angeles and San Francisco started experiencing inadequate water supplies due to increased population. In 1908, Los Angeles started construction of the Owens Valley Aqueduct which diverted water from the Owens Valley located in Inyo County. It was finished in 1913. However, this led to what has become known as the Owens Valley Water War. In retaliation for their crops dying, farmers in Owens Valley, in the 1920s, dynamited the aqueduct and its dams. When it became apparent that Southern California needed additional water in the 1930s, the Colorado aqueduct, along with the All-American and Coachella Canals were built and became operational in 1941.

In San Francisco, the growth of its population made them look at places from where to divert water. Between 1901-1902, the City engineers recommended that water be diverted from Hetch-Hetchy Canyon in Yosemite National Park. The United States Department of the Interior rejected a permit to the City for development. In 1906, the great San Francisco earthquake occurred rupturing the City's water supply lines making it difficult to put out the resulting fires. A Bay Cities water company and utility company offered to sell its water rights to the City on the American and Cosumnes Rivers near Lake Tahoe but it was learned the City's officials were to receive kickbacks from the company. In 1908, the United States Department of the Interior reversed its permit decision and granted San Francisco the right to develop Hetch-Hetchy. In 1909, when President Taft took office, the permit was rescinded. However, the United States Congress, in 1913, passed the Raker Act granting the City the Hetch-Hetchy Canyon and the first water did not reach San Francisco until 1934.

CONTINUED

At the present time, there is a movement to have Congress restore the Hetch Hetchy Canyon as it was before the diversion of water took place.

In 1928, the voters passed ACA 27 (Crittenden), at the general election, which declared that the general welfare requires water resources be beneficially used, and waste or unreasonable use or unreasonable method of use be prevented, and required conservation for the public welfare. It preserved to the riparian owner all the water to which he or she may be entitled for beneficial use by reasonable method, but required that the unwarranted and needless waste of water shall be prevented. In 1931, the Legislature passed the County of Origin law which prohibited the draining of one area's water supply for the sake of another.

In the 1930s, major developments were taken to provide for the transfer of northern water to the south. The Legislature passed, in 1933, the Central Valley Act authorizing a \$170 million bond which was approved by the voters in a special December 19, 1933 election. However, due to the Depression, the bonds were unmarketable and the federal government had to take over the project as a public works project and construction started in 1935.

In the 1940s, outbreaks of waterborne diseases, degradation of fishing and recreational water and war time industrial development and population growth prompted water pollution problems. In 1949, in response to these problems the Legislature passed the Dickey Water Pollution Act which created the State Water Pollution Control Board to set statewide policy for pollution control and coordinating the actions of those state agencies and political subdivisions of the state in controlling water pollution. It established nine regional water pollution control boards located in each of the major California watersheds to oversee and enforce the state's pollution abatement program. The state board was renamed the State Water Quality Control Board. In 1969, the Legislature enacted the Porter-Cologne Water Quality Control Act which became recognized as one of the nation's toughest pieces of anti-pollution legislation and was influential in the passage, on the federal level, of the Federal Water Pollution Control Act Amendments of 1972 known as the Clean Water Act. The State Water Resources Control Board is now the entity which is concerned with water pollution.

In 1956, the Legislature, at a special session called by Governor Goodwin J. Knight, created the Department of Water Resources to develop a state water

CONTINUED



plan. In 1957, the plan was completed which included a system of reservoirs, aqueducts, pumping and power plants to transport water from the north to the south. In 1959, the Legislature enacted, and Governor Pat Brown signed, the Burns-Porter Act providing initial funding of \$1.75 billion in general obligation bonds, and placed it on the 1960 ballot. Compromises were reached in order for the Burns-Porter Act to become law. The north counties were assured that water would be available for future projects and \$130 million of the \$1.75 billion was earmarked for these projects. The County of Origin and Watershed of Origin Acts were reaffirmed by Burns-Porter. Delta water users were ensured their water uses and that good water quality for all purposes were available with the passage of the Delta Protection Act. For Southern California, the Burns-Porter Act required that the state not impose contracts for the sale and delivery of project water during the lifetime of the bonds. The voters approved the California Water Resources Development Bond (Burns-Porter) Act by a 51.5 percent to 48.5 percent margin at the 1960 General Election. The California Water Project now includes the following facilities and projects: Upper Feather River Project, Oroville Reservoir, North Bay Aqueduct, South Bay Aqueduct, San Luis Reservoir, Pacheco Pass Aqueduct, San Joaquin Valley-Southern California Aqueduct, and the Coastal Aqueduct. The next issue of water was the building of a Peripheral Canal as part of the State Water Project. Construction of such a Canal has been proposed, since 1965, to move Sacramento River water through the eastern delta to the delta pumping plant. The Canal is to permit the release of high quality water into the main channels of the delta. These releases are expected to improve water quality in the channels, protect fisheries, flush lower quality waters from the delta and reduce the intrusion of sea water from the San Francisco Bay into the delta. The Canal would permit additional high quality water to be pumped from the delta to meet the state's contract commitments to water users under the State Water Project.

In 1980, the Legislature enacted SB 200 (Ayala) to expand the State Water Project, to specifically authorize construction of the Peripheral Canal, and to establish policy for operating conditions in the delta. Constitutional initiatives qualified for the ballot by environmentalists requiring constitutional guarantees against placing claims on the north coast rivers and providing strict guarantees for the delta and San Francisco water quality. The voters passed Proposition 8 tying approval of the Peripheral Canal to these environmental restrictions by 53.3 percent to 46.2 percent. In late 1982, a referendum qualified for the June 1982 ballot to overturn SB 200, which passed 62 percent to 38 percent.

CONTINUED



In 1988, SB 34 (Boatwright) was enacted providing for the Delta Flood Protection Fund creating a delta levee maintenance program pursuant to which a local agency may request reimbursement for costs incurred in connection with the maintenance or improvement of project or non-project levees in the Sacramento-San Joaquin Delta. It provided \$120 million over 10 years. In 1992, the Johnston-Baker-Andal-Boatwright Delta Protection Act became law mandating the designation of primary and secondary zones within the legal definition of the delta, creating a Delta Protection Commission, and completion of a land use and resource management plan for the primary zone. In 2000, the CalFed Bay-Delta Program published a plan to fix the delta water problems and address its major water challenges over the next 30 years. DWR assumed a leading role in the implementation of the CalFed plan, including programs related to water storage, delta conveyance, delta levee system integrity, watershed management, water use efficiency, and water quality.

Hurricane Katrina, in 2005, prompted the Legislature and Governor to come up with a compromise to fix various infrastructure problems in the state--water being one. The Legislature and the Governor enacted AB 140, the Preparedness and Flood Prevention Disaster Bond Act of 2004, which became Proposition 1E on the 2006 General Election ballot and the voters passed. The bond act provided \$4.09 in general obligation bonds for the rebuilding and repairs of California's most vulnerable flood control structures to protect homes and prevent loss of life from flood-related disasters, including levee failure, flash floods, and mudslides and to protect California's drinking water supply system by rebuilding levees that are vulnerable to catastrophes and storms.

On September 11, 2007, the Governor called a special session to protect and restore the Sacramento-San Joaquin Delta while also improving the reliability and quality of water supplies from that estuary and to address the short-term and long-term improvement of California's water management system.

The Governor proposed a \$9 billion water infrastructure plan including \$600 million from the bond measures passed by the voters in 2006 to relieve pressure on deltas from environmental concerns and to respond to the federal court ruling that will reduce water deliveries to Southern California; \$5.6 billion in water storage (\$5.1 billion for surface and \$500,000 for groundwater); \$1.9 billion for delta restoration and water supply reliability;

CONTINUED

\$1 billion in grants for conservation and regional water projects; and \$500 million in grants for specified watersheds throughout the state. The Governor also called for a new Peripheral Canal: SB 3XX and 4XX (Cogdill) and AB 4X (Villines). All these bills died when the extraordinary session was adjourned.

Senator Perata introduced SB 2XX allowing a \$6.5 billion general obligation bond for water supply, reliability, delta sustainability, conservation and pollution cleanup, protection against invasive species, groundwater protection, water quality, and water recycling. SB 2XX was voted on by the Senate and was defeated on a party line vote.

The major difference between the two water plans was that the Governor provided for the building of surface storage facilities (dams) while SB 2XX included \$2 billion for regional grants to improve water supply reliability but did not exclude dams as long as that is the fastest, cheapest and most efficient way to increase water supply. SB 2XX emphasized regional decision making rather than investing control in DWR. SB 2XX would have set up a competitive process in each region to fund the projects that provide the most water at the lowest cost.

On August 31, 2007, Federal Court Judge Oliver Wagner ruled to restrict water deliveries from the Sacramento-San Joaquin Delta to the Bay Area, Central Valley and Southern California due to the endangerment of the endangered species delta smelt which has made the water supply issue more complex.

In the 2007 Regular Session, the Legislature enacted and the Governor did sign into law legislation which enhances flood protection in California: SB 5 (Machado) requiring the Department of Water Resources and the Central Valley Flood Protection Board to prepare and adopt a Central Valley Flood Protection Plan by 2012, and establishing flood protection requirements for local land-use decisions consistent with the Central Valley Protection Plan; SB 17 (Florez) reforming and removing the Reclamation Board to the Central Valley Flood Protection Board and improving proficiency, and requiring development of the State Plan of Flood Control for the Central Valley; AB 70 (Jones) providing, generally, that a city or county may be required to contribute a fair and reasonable share of the increased flood liability caused by its unreasonable approval of the developments following the failure of a state flood control project; AB 156 (Laird) enhancing information and planning related to Central Valley flood protection and the

improvement of the system by the Department of Water Resources and local agencies; AB 162 (Wolk) requiring cities and counties to address flood-related matters in the land use, conservation, safety , and housing elements of their general plans; AB 5 (Wolk) making clarifying and technical changes to the preceding bills.

The Delta Vision Blue Ribbon Task Force identified seven goals which they felt virtually everyone could agree on to bring forward a comprehensive water plan for the state:

1. Delta restoration must be founded on the co-equal goals of water supply reliability and ecosystem restoration.
2. Recognize and enhance the unique cultural, recreational, and agricultural values of the Delta as an evolving place.
3. Restore the Delta ecosystem as the heart of a healthy estuary.
4. Promote statewide water conservation, efficiency and sustainable use.
5. Build facilities to improve the existing water conveyance system and expand statewide storage
6. Reduce the 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, scientific support and secure funding to achieve these goals.

The Governor and Senator Dianne Feinstein in July of 2009 reached an agreement to propose a \$9.3 billion water bond.

**FISCAL EFFECT:** Appropriation: Yes Fiscal Com.: Yes Local: No

Appropriates \$546 million from various funds authorized by Proposition 84 for various projects contained in the bill.

Appropriates approximately \$3.7 million for the 25 positions that the bill creates.

CONTINUED

According to the Senate Appropriations Committee analysis of AB 900, the SWB indicates that there are a very significant number of diversions in the Delta that are not currently reported to the SWB. The SWB indicates that there will be significant workload associated with processing the initial diversion statements from those diversions. The SWB does not charge a fee for filing a statement of diversion and use and this bill does not impose such a fee. The Water Rights Division of the SWB is funded with the Water Rights Fund and the General Fund. Because files of statements of diversion do not contribute to the Water Rights fund, it may not be legally appropriate to use those funds to pay for the costs of implementing this bill.

JJA:cm 11/4/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* **END** \*\*\*\*

Revised – As Amended RN0925404

SENATE THIRD READING

SB 8 X7 (Steinberg)

As Amended November 4, 2009

Majority vote

SENATE VOTE: 21-12

SUMMARY: Deletes water diversion reporting exemptions for diverters in the Sacramento-San Joaquin Delta (Delta). Appropriates funding from bonds and a special fund. Specifically, this bill:

- 1) Authorizes the State Water Resources Control Board (SWRCB) and the Department of Water Resources (DWR) to adopt emergency regulations for the filing of reports of water diversion or use that are required to be filed by those respective state agencies under specified statutory provisions.
- 2) Revises exemptions for the reporting of water diversions, after January 1, 2009, including:
  - a) Limiting exemptions for diversions from a spring that does not flow off the property to annual diversions of 25 acre-feet or less;
  - b) Eliminating exemptions for diversions covered by a water right application at SWRCB, located in "Delta lowlands," or reported in DWR hydrologic bulletins;
  - c) Adding exemption for small domestic or livestock stock pond uses;
  - d) Limiting exemption for Delta diversions to those with a combined diversion capacity of less than 10 gallons per minute; and,
  - e) Revising exemption for diversions regulated by the Watermaster, to require submission of information by the Watermaster.
- 3) Eliminates the 50 cubic feet per second (cfs) threshold for reporting of diversions in the Delta.
- 4) Specifies required information as to the location of diversions.
- 5) Allows diverters to avoid using best available water measurement technology for monthly reporting if not locally cost-effective.
- 6) Subjects a person to civil liability if that person fails to file, as required, a diversion and use statement for a diversion or use that occurs after January 1, 2009, tampers with any measuring device, or makes a material misstatement in connection with the filing of a diversion and use statement.
- 7) Authorizes SWRCB to impose the civil liability in accordance with a specified schedule and specified considerations, including ability to pay.

- 8) Appropriates \$546 million in bond funding from Propositions 1E (2006) and 84 (2006) as follows:
  - a) \$250 million from integrated regional water management funding to reduce dependence on the Sacramento-San Joaquin Delta (Delta) for water supply;
  - b) \$32 million from Delta flood control funding for flood control projects that reduce levee failure risk that would jeopardize water conveyance in the Delta;
  - c) \$170 million from Central Valley flood control funding for Delta flood control projects to protect water supply;
  - d) \$70 million from storm water flood management funding for storm water projects; and,
  - e) \$24 million in Natural Community Conservation Plan (NCCP) funding for NCCP projects in or around the Delta.
- 9) Appropriates \$3.75 million in fee-generated funding from the Water Rights Fund to hire 25 additional water rights enforcement personnel at SWRCB.
- 10) Makes additional conforming changes and related legislative findings and declarations.
- 11) Makes this bill contingent on enactment of SB 1 x7 (Simitian), SB 6 x7 (Steinberg) and SB 7 x7 (Steinberg).

EXISTING LAW:

- 1) Exempts surface water diversions of less than 50 cfs, or diversions by siphons from the tidal zone of the Delta from requirements for measurement and reporting to SWRCB. Delta diversions are also exempt if consumptive use data for the Delta lowlands is published by DWR in its hydrologic data bulletins.
- 2) Authorizes bond funding for a variety of flood protection, water supply, water quality and watershed programs, based on November 2006 voter approval.

FISCAL EFFECT: Appropriates \$579.75 million. In addition, Senate Appropriations Committee estimated costs, for a predecessor bill in the regular session, AB 900 (De Leon), at approximately \$500,000.

COMMENTS: This bill would require all in-Delta diverters to record and report all diversions, regardless of method or volume of their diversion, to SWRCB. Historically, Delta diversions were exempt from water diversion reporting requirements, which date back to 1965, due to the distinct nature of Delta diversions. As discussion of the need for greater information on water diversions, particularly within the Delta's watershed, has developed, the need for information on all diversions has become apparent. The conflict over state and federal water project (CVP/SWP) diversions intensified demand that all Delta diversions be monitored. In October 2008, the Delta Vision Strategic Plan (Plan), issued by the Delta Vision Blue Ribbon Task Force (Task Force), confirmed that need, noted the uncertainty of Delta decision-making without

accurate reporting, and recommended repeal of the Delta's reporting exemptions. The cabinet-level Delta Vision Committee concurred in that recommendation.

Delta Reporting Exemptions: SB 8 X7 would repeal the portion of AB 1404 (Laird) from 2007 that exempts in-Delta diverters from reporting requirements and require those diverters to begin monitoring and reporting as soon as January 2011, rather than 2012 for other diverters. AB 1404 exempted in-Delta users from post-2012 requirements to provide monthly reports of water diversions. The lack of any reporting on in-Delta diversions (other than CVP/SWP diversions) leads to a lack of information on the quantity and timing of diversions within the region. By contrast, the CVP/SWP diversions are tracked with precision. The December 2007 Task Force report estimates that in-Delta diversions represent between 4% and 5% of total Delta inflow, compared to about 17% for Delta exports. The Task Force's 2008 report stated "the State Board has issued permits for the diversion of water from the Delta to less than a third of those currently assumed to be doing so. The State Board does not know how many divert water without permits." In recent years, there has been a surge in water rights and reporting litigation, much of it focused on diversions from the Delta watershed.

Levee Bond Appropriations: In November 2006, voters approved a substantial amount of bond funding for watershed protection and Central Valley flood protection, including improvements to Delta levees. This bill relies on bond funding approved by voters in Propositions 1E (legislative bond) and 84 (initiative bond). This funding will address an urgent issue that was not foreseen in 2006 – the current drought – but the purposes of these appropriations were nevertheless authorized for bond funding.

Water Rights Fund Appropriation: This bill also includes a \$3.75 million appropriation from the Water Rights Fund, which is funded by fees on water right holders to support operation of the Water Rights Division of SWRCB.

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

FN: 0003501





## California State Legislature

# THE 2009 DELTA & WATER LEGISLATION Legislative History

- V. Groundwater Elevation Monitoring Program
  - A. Predecessor Bills
    - 1. SB 820 (Kuehl/2005), SB 1640 (Kuehl/2006), SB 178 (Steinberg/2007)
    - 2. SB 122 (Pavley)
  - B. Final Outcome: SB 6 (Steinberg)

SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Sheila Kuehl, Chair  
2005-2006 Regular Session

BILL NO: SB 820  
AUTHOR: Kuehl  
AMENDED: 4/18/05  
FISCAL: Yes HEARING DATE: 4/26/05  
URGENCY: No CONSULTANT: Dennis O'Connor  
SUBJECT: Water

Summary: This bill would establish water conservation as a consideration for determining reasonable use, establish requirements for reporting annual use of water under various water rights, establish consequences for failing to file required reports, and add additional requirements on various water resources planning processes.

Existing Law:

Reasonable Use. Under Article X of the California Constitution, the right to use water is limited to the amount of water that is reasonably required for the beneficial use of that water, and that right does not extend to the waste or unreasonable use, method of use, or method of diversion of water. Under current law, the conformity of a use, method of use, or method of diversion of water with local custom does not, by itself, determine the reasonableness of that use, method of use, or diversion.

SWP Reliability Report. On May 5, 2003, the Planning and Conservation League et al. signed a settlement agreement with the Department of Water Resources (DWR) et al. to resolve a lawsuit concerning the "Monterey Agreement." Among other provisions, this settlement agreement requires DWR to produce a biennial State Water Project (SWP) reliability report.

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Fully Appropriated Streams. Under current law, the State Water Resources Control Board (SWRCB) may, following notice and hearing, declare that a stream system is fully appropriated.

Groundwater Reporting. In the Counties of Riverside, San Bernardino, Los Angeles, and Ventura, current law requires any person who extracts groundwater in excess of 25 acre-feet in any year to file with the SWRCB an annual notice of extraction. This requirement, with certain exceptions, applies to any groundwater extracted after 1955. Moreover, after 1959, failure to file a notice for any calendar year within 6 months after the end of that calendar year is deemed equal to nonuse of the groundwater.

Surface Water Reporting. Existing law requires each person who diverts water after December 31, 1965 to file with the state board a statement of diversion and use before July 1 of the succeeding year, with certain exceptions. These exceptions include diversions covered by an application, or a permit or license to appropriate water on file with the SWRCB. The SWRCB separately requires permit and license holders to report annual use as a condition of the permit or license. These exceptions also include diversions reported by DWR in its hydrologic data bulletins or diversions included in the consumptive use data for the delta lowlands published by DWR in its hydrologic data bulletins. Also under existing law, it is a misdemeanor to make a willful misstatement regarding statements of diversion or use and any person who makes a material misstatement under these provisions may be civilly liable. Under existing law, statements filed pursuant to these

provisions are for informational purposes only, and, except as noted above, neither the failure to file a statement nor any error in the information filed have any legal consequences.

California Water Plan. Under existing law, the California Water Plan is the plan for the orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state. Existing law requires the plan to include a discussion of specified

□

topics, including:

Various strategies, including those relating to the development of new water storage facilities, water conservation, water recycling, desalination, conjunctive use, and water transfers that may be pursued in order to meet the future water needs of the state.

The potential for alternative water pricing policies to change current and projected uses.

Urban Water Management Plans. Under existing law, every urban water supplier is required to prepare and adopt an urban water management plan, as prescribed, including a requirement that the urban water supplier coordinate the preparation of the plan with other appropriate agencies, to the extent practicable. Existing law also requires an urban water supplier to submit a copy of its plan to the department, the California State Library, and any city or county within which the supplier provides water supplies, and to make the plan available for public review during normal business hours.

Under existing law, if an urban water supplier fails to prepare, adopt, and submit an urban water management plan, it is ineligible for certain bond funds and drought assistance until it does so. Existing law, until January 1, 2006, also requires the department to take into consideration whether a plan has been submitted in determining eligibility for other program funds.

Groundwater Management Plans. Under existing law, a local agency whose service area includes a groundwater basin that is not subject to groundwater management may adopt and implement a groundwater management plan pursuant to certain provisions of law.

Agricultural Water Management Plans. Until January 1, 1993, and thereafter only as specified, existing law provides for the preparation and adoption of water management plans. That existing law defines "agricultural water supplier" or "supplier" to mean a supplier, either publicly or privately owned, supplying more than 50,000 acre-feet of water annually for agricultural purposes.

□

Proposed Law: This bill would do the following:

Reasonable Use. This bill would establish that other factors to be considered in determining the reasonableness of a water use, method of use, or method of diversion include:

The feasibility and reasonableness of the costs of conserving water.

The economic, social, and other benefits of conserving water.

Other potential beneficial uses that could be made of water that could be conserved.

Whether water that could be conserved currently serves a downstream beneficial purpose.

SWP Reliability Report. This bill would establish in statute the requirement that DWR produce a biennial SWP reliability report. The statute would parallel the language used in the Monterey Agreement settlement agreement.

Fully Appropriated Streams. This bill would require the executive director of the SWRCB to establish, maintain, and publish a list of stream systems that are candidates for being declared fully appropriated. The executive director shall add or remove stream systems to the candidate list based on information known to the executive director and the executive director's best judgment of the likelihood of the SWRCB declaring the stream system fully appropriated. The list of candidate stream systems shall be used for informational purposes only.

Groundwater Reporting. This bill would expand the groundwater reporting requirements and provisions to the remaining counties in the state for extractions on and after January 1, 2006.

Surface Water Reporting. This bill would establish consequences for failing to file statements of annual diversion or use for any diversion or use that occurs on or after January 1, 2006, as follows:

Expands the current civil liability provision that applies to willful material misstatements regarding

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annual diversion or use to apply to any person who fails to file a statements for a diversion or use.

Makes any person who fails to file a statement for a diversion or use ineligible for funds made available pursuant to any program administered by the state board, the department, or the California Bay-Delta Authority.

In any proceeding before the SWRCB in which it is alleged that an appropriative right has ceased because water has not been put to beneficial use, any use that is required to be included in a statement of annual use that has not been reported shall be deemed not to have occurred.

This bill would also delete obsolete exceptions to filing statements of annual diversion or use for diversions reported by DWR in its hydrologic data bulletins or included in the consumptive use data for the delta lowlands published by DWR in its hydrologic data bulletins.

California Water Plan. This bill would require the plan to include a discussion of the amount of energy both produced by and required by each water management strategy during peak and nonpeak use. The bill would require the plan to include estimates of the amount of energy, produced as well as required to provide, current and projected water supplies.

Urban Water Management Plans. This bill would require the following:

In addition to agencies already identified under current law, urban water agencies are to coordinate the preparation of the plan with public utilities that provide electric or gas service.

The plan is to quantify the amount of energy both produced by and required by existing and planned water sources.

The cost-benefit analysis for water demand management measures is to include the energy costs and benefits of conserved water during periods of peak and nonpeak use.

The urban water supplier is to submit a copy of its plan to additional entities, as appropriate, including groundwater management entities, agricultural water

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suppliers, city and county libraries, and county LAFCOs.

The urban water supplier must also make the plan available for public review on its Internet Web site.

The bill would make more explicit the public process for preparing and adopting urban water management plans. This

bill would make an urban water supplier that fails to prepare, adopt, and submit an urban water management plan ineligible for funds made available pursuant to any program administered by the state board, the department, or the California Bay-Delta Authority, until it does so.

Groundwater Management Plans. This bill, except as specified, would require a local agency to update the plan on or before December 31, 2008, and every 5 years thereafter. The bill would require a local agency to submit a copy of its plan to additional entities as appropriate, including cities and counties, urban water suppliers, agricultural water suppliers, city and county libraries, and county LAFCOs.

Agricultural Water Management Plans. This bill would substantially revise existing law relating to agricultural water management planning to require every agricultural water supplier to prepare and adopt an agricultural water management plan, as prescribed, on or before December 31, 2010. The bill would do all of the following:

Define "agricultural water supplier" or "supplier" to mean a supplier, either publicly or privately owned, supplying more than 2,000 acre-feet of water annually for agricultural purposes or serving more than 2,000 acres of agricultural land.

Require an agricultural water supplier to update the plan, file it, and make it available, as prescribed. The requirements for developing agricultural water management plans largely parallel the requirements for developing urban water management plans.

Make ineligible for funds made available pursuant to any program administered by the state board, the department, or the California Bay-Delta Authority any agricultural water supplier that fails to prepare, adopt, and submit a plan.

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Require the agricultural water supplier to submit a copy of its plan to additional entities as appropriate, including cities and counties, urban water suppliers, agricultural water suppliers, groundwater management entities, city and county libraries, and county LAFCOs.

#### Arguments in Support:

According to the author, "it is surprising, that, in a state as developed and dependent upon water as ours, we know so little about how people use water, how they manage water, and what they plan to do to meet the needs of our growing population. If we are to accommodate growth, preserve agriculture, and protect and restore our natural resources, we need to:

Make water conservation a fundamental duty in water policy. Conservation saves money and water, and it can save electricity too.

Improve the reporting of how water rights holders are using their rights. This would allow local groundwater agencies and other local water managers to more effectively manage their resources.

Make our process for water resources planning more open-open to those who wish to participate in the planning, and open to those who want to know what the plan is."

Reduce Uncertainty. According to the Southern California Water Committee, "water is the driving force of California's economy. We believe that to assure that our state's economy remains strong and viable, we need to have adequate water supplies. The more information available to determine what our water resources are, the better we can provide for the water needs of California."

Metropolitan Water District of Southern California notes SB 820 "will strengthen water conservation policy, increase an understanding of water use in California and enhance the integrity of water resources planning and management. SB 820 will provide valuable information to state, regional and local water purveyors to promote better planning which will enable water suppliers to provide a heightened level of reliability and certainty to existing and future

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customers."

Open Processes. According to the Planning and Conservation League, "SB 820 also advances good public policy by establishing that the process for developing an Urban Water Management Plan (UWMP) will be open and transparent. In addition to being important planning documents, UWMPs provide the basis for compliance with SB 610 and SB 221 that require demonstration of reliable water prior to approval of new development. Because UWMPs provide the basis for these important decisions that affect the reliability of water supplies for entire California communities, it is essential that citizens are involved and participate in the process for developing these plans."

Groundwater Reports. According to NRDC, "Information on groundwater use in California is practically non-existent, which hinders state water planning efforts. Yet surface water and groundwater are highly interrelated. Requiring reporting of groundwater use is a long overdue step in sensible management of California's water resources. SB 820 would extend groundwater reporting provisions that have been in place in four Southern California counties since 1955. We believe this is an important reform."

Agricultural Water Management Reports. According to NRDC, "We further support the requirement that agricultural water suppliers adopt water management plans." "Contractors with the federal Central Valley Project are already required to prepare these plans and signatories to the Agricultural Water Management Council have already agreed to do so on a voluntary basis. SB 820 would apply this same requirement to the remaining agricultural water suppliers. Preparation of water management plans would facilitate a systematic review of water management alternatives that could reduce water use, improve water quality, and provide other environmental and economic benefits."

Arguments in Opposition:

Reasonableness of Use. According to ACWA, "we are very concerned over the vagueness of the new test for determining the reasonableness of use, method of use, or

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method of diversion of water. For example, the language added to Water Code section 100.5 (3) could be interpreted to mean that agricultural beneficial uses could be balanced against urban beneficial uses and vice versa leading to disputes that are unnecessary. We believe it is important to provide greater clarity for determining reasonable use."

Fully Appropriated Streams. According to a coalition of water users, "the State Water Resources Control Board would no longer be the entity responsible for making decisions regarding candidate streams. Instead, this bill delegates the authority to the executive director. The bill provides that the executive director may make the candidate determination based upon her/his best judgment of the likelihood of the board declaring the stream system fully appropriated. Instead of asking that the executive director speculate about the outcome of a board proceeding, we urge you to retain the existing system in which the board makes the determination. This approach would provide the full protection of the board's public hearing and appeal process."

Groundwater Reports. According to ACWA, "This bill requires all groundwater users who extract over 25 acf/yr to report annual extractions to the SWRCB or a designated collection agency beginning in 2006. The bill also conditions a local agency receiving state grant funds on the filing of the extraction report. There are literally thousands of groundwater pumpers statewide that would meet the test for submitting annual extractions reports. That will generate an unwieldy level of data for SWRCB staff and seems unnecessarily disaggregated to meet the level of information necessary in order to assess the states groundwater resources and its usage. The State Water Resources Control Board does not have the resources to

compile and properly manage this level of data. In addition, the SWRCB does not have authority over groundwater so it shouldn't be receiving the reports."

ACWA continues, "More importantly, extraction of water doesn't help provide information on the condition of a water basin. Extraction will only provide the amount of water used and does not provide information as to the level

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of the groundwater basin over time nor the contaminants if any that may be found in the basin. There are numerous examples of local and regional groundwater management efforts that could be used as model for a more manageable yet effective method for generating the groundwater data that the author finds necessary."

Agricultural Water Management Reports. According to the Farm Bureau, "The Agricultural Water Management Council has made great strides in broadening participation in farm water management and conservation. Many districts that do not participate in the council are actively participating in the development of Integrated Regional Water Management Plans. Under the current state of affairs, it would be unwise to impose a legislative mandate to participate in this process, or define the contents of plans in the Water code. It has not been necessary to date to require such participation, and to do so now would be counter-productive to the continuing effort."

Penalties. According to the California Chamber of Commerce, "Generally, SB 820 significantly increases reporting requirements for landowners and agricultural and urban water suppliers with penalties that seem too extreme. In the case of a groundwater extraction of greater than 25 acre-feet, the failure to report translates to the loss of a water right and the loss of access to Prop 50 funding. The same is true concerning the non-reporting of an appropriative water right. There appears to be no right to cure before penalties are imposed."

Comments:

The latest amendments appear to have resolved, or at least reduced, some of the most pressing concerns with the bill. However, as shown by the list of issues raised by opponents, there are still a number of unresolved issues.

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SUPPORT:  
Metropolitan Water District of Southern California (If amended)  
Natural Resources Defense Council  
Olivehain Municipal Water District (If amended)  
Planning and Conservation League  
Sierra Club California  
Southern California Water Committee (If amended)

OPPOSITION:  
Agricultural Council of California (Unless amended)  
Alta Irrigation District  
Association of California Water Agencies (Unless amended)  
California Association of Winegrape Growers (Unless amended)  
California Chamber of Commerce  
California Farm Bureau Federation  
Imperial Irrigation District (Unless amended)  
Irvine Ranch Water District (Unless amended)  
Kern County Water Agency (Unless amended)  
Kings River Conservation District (Unless amended)



Kings River Water Association (Unless amended)  
Modesto Irrigation District (Unless amended)  
Nisei Farmers League  
Private Citizen (1)  
Regional Council of Rural Counties (Unless amended)  
Zone 7 Water Agency of Alameda County (Unless amended)

Senate Appropriations Committee Fiscal Summary  
Senator Carole Migden, Chairwoman

820 (Kuehl)

Hearing Date: 5/9/05                      Amended: 4/18/05  
Consultant: Miriam Barcellona IngenitoPolicy Vote: NR&W 7-3

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SB 820 (Kuehl)  
Page 2

BILL SUMMARY: SB 820 would establish water conservation as a consideration for determining reasonable use, establish requirements for reporting annual use of water under various water rights, establish consequences for failing to file required reports, and add additional requirements on various water resource planning processes.

Fiscal Impact (in thousands)

Major Provisions	2005-06	2006-07	2007-08	Fund
SWRCB: Identify, maintain, & publish	\$500	\$1,000		
\$1,000Special*				
list of potentially fully appropriated streams				
SWRCB Expand ground-water part of bill		> \$2.5		
millionSpecial*				
DWR: SWP report	minor and absorbable		Special	
*				
DWR: CA Water Plan	\$415			
Special*				

\*Various funds within the State Water Resources Control Board and the Department of Water Resources.

STAFF COMMENTS: This bill meets the criteria for referral to the Suspense file.

There are nine discrete parts to this bill:

1. Reasonable Use. Under Article X of the California Constitution, the right to use water is limited to the amount of

water that is reasonably required for the beneficial use of that water, and that right does not extend to the waste or unreasonable use, method of use, or method of diversion of water. Under existing law, the conformity of a use, method of use, or method of diversion of water with local custom does not, by itself, determine reasonableness of that use, method of use, or diversion. SB 820 would establish that other factors are to be considered in determining the reasonableness of a water use, method of use, or method of diversion. This would codify

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SB 820 (Kuehl)  
Page 3

current case law and would therefore result in no new costs to the state.

2. State Water Project Reliability Report. The Planning and Conservation League et al. signed a settlement agreement with the Department of Water Resources (DWR) to resolve a lawsuit concerning the "Monterey Agreement." This settlement agreement requires DWR to produce a biennial State Water Project Reliability Report. SB 820 would codify that component of the agreement. This provision would not result in additional costs to the State.

3. Fully Appropriated Streams. Existing law authorizes the State Water Resources Control Board (SWRCB), after notice and hearing requirements are met, to declare that a stream system is fully appropriated. SB 820 would require the executive director of the SWRCB to establish, maintain, and publish a list of stream systems that are candidates for being declared fully appropriated. SWRCB estimates it would incur costs in excess of \$1 million to establish and maintain the list.

4. Groundwater Reporting. Existing law requires any person who extracts groundwater in the Counties of Riverside, San Bernardino, Los Angeles, and Ventura, in excess of 25-acre-feet in any year to file with the SWRCB an annual notice of extraction. After 1959, failure to file a notice for any calendar year within 6 months after the end of that calendar year, in those four counties, is deemed equal to nonuse of the groundwater. SB 820 would expand those groundwater provisions to the rest of the State for extractions on and after January 1, 2006. The SWRCB has not completed its fiscal analysis on this bill, but preliminarily indicates costs to expand the program statewide would likely be in excess of \$2.5 million. Under existing law, the SWRCB is authorized to charge a fee to cover its costs.

5. Surface Water Reporting. Existing law requires each person who diverts water after December 31, 1965 to file with SWRCB a statement of diversion and use before July 1 of the succeeding year, with certain exceptions. Also under existing law, it is a misdemeanor to make a willful misstatement regarding statements of diversion or use and any person who makes a material misstatement under these provisions may be civilly liable. Under existing law, statements filed pursuant to these

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SB 820 (Kuehl)  
Page 4

provisions are for informational purposes only and, with specific exceptions, neither the failure to file a statement nor any error in the information filed has any legal consequences. SB 820 would establish consequences for failing to file statements of annual diversion or use for any diversion or use that occurs on or after January 1, 2006. These consequences include (a) expanding the current civil liability provisions to any person who fails to file a statement for a diversion or use; (b) making ineligible for certain state funding any person who fails to file a statement for a diversion; and (c) require the SWRCB to deem any water that was required to be included in a statement of annual use that has not been reported to have not occurred.

6. California Water Plan. Under existing law, the California Water Plan is the plan for the orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the State. It is required to include discussion of specified topics. SB 820 would require the plan to include a discussion of the amount of energy both produced by

and required by each water management strategy during peak and non-peak use. The bill would require the plan to include estimates of the amount of energy, both produced and required, to provide current and projected water supplies. DWR has not completed its fiscal analysis of this bill, but preliminarily estimates that it would require two positions and \$415,000 to implement this provision.

7. Urban Water Management Plans. Under existing law, every urban water supplier is required to prepare and adopt an urban water management plan, as prescribed. Urban water suppliers are required to submit a copy of the plan to DWR, the California State Library, and any city or county within which the supplier provides water supplies, and to make the plan available for public review during normal business hours. If urban water suppliers fail to prepare, adopt and submit an urban water management plan, it is ineligible for certain bond funds and drought assistance until it does so. Until January 1, 2006, existing law requires DWR to take into consideration whether a plan has been submitted in determining eligibility for other program funds. SB 820 would, among other things, amend those provisions to address energy issues, cost-benefit analysis for water demand management, and clarify public processes. These provisions would not result in a reimbursable mandate and would,

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SB 820 (Kuehl)  
Page 5

therefore, not directly impact the State.

8. Groundwater Management Plans. Under existing law, a local agency whose service area includes a groundwater basin that is not subject to groundwater management may adopt and implement a groundwater management plan, as specified. SB 820 would require the agency to update the plan, as specified and submit copies for public access, as specified. These provisions would not result in a reimbursable mandate.

9. Agricultural Water Management Plans. Existing law provides for the preparation and adoption of water management plans, as specified. SB 820 would substantially revise existing law and require every agricultural water supplier to prepare and adopt an agricultural water management plan, as prescribed, on or before December 31, 2010. These provisions would not result in a reimbursable mandate and therefore have no state costs.

STAFF NOTES that the author has identified a number of amendments that will be offered while the bill is on Suspense to address costs and concerns of the opposition.

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SENATE RULES COMMITTEE	SB 820
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614	Fax: (916)
327-4478	

## THIRD READING

Bill No: SB 820  
 Author: Kuehl (D)  
 Amended: 5/27/05  
 Vote: 21

SENATE NATURAL RESOURCES & WATER COMM. : 7-3, 4/26/05  
 AYES: Kuehl, Bowen, Kehoe, Lowenthal, Machado, Migden,  
 Romero  
 NOES: Aanestad, Dutton, Hollingsworth  
 NO VOTE RECORDED: Margett

SENATE APPROPRIATIONS COMMITTEE : 8-5, 5/26/05  
 AYES: Migden, Alarcon, Alquist, Escutia, Florez, Murray,  
 Ortiz, Romero  
 NOES: Aanestad, Ashburn, Battin, Dutton, Poochigian

SUBJECT : Water

SOURCE : Author

DIGEST : This bill establishes water conservation as a consideration for determining reasonable use, establishes requirements for reporting annual use of water under various water rights, establishes consequences for failing to file required reports, and adds additional requirements on various water resources planning processes.

ANALYSIS :

Reasonable Use . Under Article X of the California  
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Constitution, the right to use water is limited to the amount of water that is reasonably required for the beneficial use of that water, and that right does not extend to the waste or unreasonable use, method of use, or method of diversion of water. Under existing law, the conformity of a use, method of use, or method of diversion of water with local custom does not, by itself, determine reasonableness of that use, method of use, or diversion. This bill establishes that other factors are to be considered in determining the reasonableness of a water use, method of use, or method of diversion. This codifies current case law and therefore results in no new costs to the state.

State Water Project Reliability Report . The Planning and Conservation League, and others, signed a settlement agreement with the Department of Water Resources (DWR) to resolve a lawsuit concerning the "Monterey Agreement." This settlement agreement requires DWR to produce a biennial State Water Project Reliability Report. This bill codifies that component of the agreement. This provision will not result in additional costs to the state.

Groundwater Reporting . Existing law requires any person who extracts groundwater in the Counties of Riverside, San Bernardino, Los Angeles, and Ventura, in excess of 25-acre-feet in any year to file with the SWRCB an annual notice of extraction. After 1959, failure to file a notice for any calendar year within six months after the end of that calendar year, in those four counties, is deemed equal to nonuse of the groundwater. This bill imposes parallel provisions on the remaining counties in the state for

extractions. This bill requires the state board to allow any person who fails to submit a statement to cure that defect, if it determines that the person who failed to file the statement made a good faith effort to comply.

Surface Water Reporting . Existing law requires each person who diverts water after December 31, 1965, to file with SWRCB a statement of diversion and use before July 1 of the succeeding year, with certain exceptions. Also under existing law, it is a misdemeanor to make a willful misstatement regarding statements of diversion or use and any person who makes a material misstatement under these

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Page

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provisions may be civilly liable. Under existing law, statements filed pursuant to these provisions are for informational purposes only and, with specific exceptions, neither the failure to file a statement nor any error in the information filed has any legal consequences. This bill establishes consequences for failing to file statements of annual diversion or use for any diversion or use that occurs on or after January 1, 2006. These consequences include (1) expanding the current civil liability provisions to any person who fails to file a statement for a diversion or use, (2) making ineligible for certain state funding any person who fails to file a statement for a diversion, and (3) requiring the SWRCB to deem any water that was required to be included in a statement of annual use that has not been reported to have not occurred. This bill requires the state board to allow any person who fails to submit a statement to cure that defect, if it determines that the person who failed to file the statement made a good faith effort to comply.

California Water Plan . Under existing law, the California Water Plan is the plan for the orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state. It is required to include discussion of specified topics. This bill requires the plan to include a discussion of the amount of energy both produced by and required by each water management strategy during peak and non-peak use. This bill requires the plan that is due on or after December 31, 2013, to include estimates of the amount of energy, both produced and required, to provide current and projected water supplies. DWR has not completed its fiscal analysis of this bill, but preliminarily estimates that it requires two positions and \$415,000 to implement this provision.

Urban Water Management Plans . Under existing law, every urban water supplier is required to prepare and adopt an urban water management plan, as prescribed. Urban water suppliers are required to submit a copy of the plan to DWR, the California State Library, and any city or county within which the supplier provides water supplies, and to make the plan available for public review during normal business hours. If urban water suppliers fail to prepare, adopt and

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submit an urban water management plan, it is ineligible for certain bond funds and drought assistance until it does so. Until January 1, 2006, existing law requires DWR to take into consideration whether a plan has been submitted in determining eligibility for other program funds. This bill, among other things, amends those provisions to address energy issues, cost-benefit analysis for water demand management, and clarify public processes. These provisions will not result in a reimbursable mandate and will, therefore, not directly impact the state.

Groundwater Management Plans . Under existing law, a local agency whose service area includes a groundwater basin that is not subject to groundwater management may adopt and implement a groundwater management plan, as specified. This bill requires the agency to update the plan, as specified, and submit copies for public access, as

specified. These provisions will not result in a reimbursable mandate.

Agricultural Water Management Plans . Existing law provides for the preparation and adoption of water management plans, as specified. This bill substantially revises existing law and requires every agricultural water supplier to prepare and adopt an agricultural water management plan, as prescribed, on or before December 31, 2010. These provisions will not result in a reimbursable mandate and therefore have no state costs. This bill defines "agricultural water supplier" or "supplier" to mean a supplier, either publicly or privately owned, supplying more than 10,000 acre-feet of water annually for agricultural purposes. This bill requires every person that becomes an agricultural water supplier to adopt an agricultural water management plan within one year after it has become an agricultural water supplier. This bill requires an agricultural water supplier to update the plan, file it, and make it available, as prescribed. This bill makes an agricultural water supplier that fails to prepare, adopt, and submit a plan ineligible for funds made available pursuant to any program administered by the state board, the department, or the California Bay-Delta Authority. This bill requires an agricultural water supplier to make the plan available for public review on the supplier's Internet web site.

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FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: No

Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>Fund</u>
SWRCB expand ground-fees)Special* water reports	>\$2.5 million (offset by			
DWR: SWP report Special*	minor and absorbable			
DWR: CA Water Plan 2013)Special*	\$415 (for update in			

\* Various funds within the State Water Resources  
Control Board and the Department of Water Resources

SUPPORT : (Verified 5/27/05)

Attorney General Bill Lockyer  
California Water Impact Network  
Calleguas Municipal Water District (if amended)  
Metropolitan Water District of Southern California (if amended)  
Natural Resources Defense Council  
Olivehain Municipal Water District (if amended)  
Planning and Conservation League  
Sierra Club California  
San Diego County Water Authority (if amended)  
Southern California Water Committee (if amended)

OPPOSITION : (Verified 5/27/05)

Agricultural Council of California (unless amended)  
Alta Irrigation District  
Association of California Water Agencies (unless amended)  
California Agricultural Irrigation Association  
California Association of Winegrape Growers (unless amended)  
California Chamber of Commerce

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California Farm Bureau Federation  
City of Santa Rosa



Consolidated Irrigation District  
County of Siskiyou  
Imperial Irrigation District (unless amended)  
Irvine Ranch Water District (unless amended)  
Kern County Water Agency (unless amended)  
Kings River Conservation District (unless amended)  
Kings River Water Association (unless amended)  
Lake Hemet Municipal Water District  
Modesto Irrigation District (unless amended)  
Northern California Water Association (unless amended)  
Nisei Farmers League  
Regional Council of Rural Counties (unless amended)  
Western State Petroleum Association  
Zone 7 Water Agency of Alameda County (unless amended)

ARGUMENTS IN SUPPORT : The Metropolitan Water District of Southern California notes this bill "will strengthen water conservation policy, increase an understanding of water use in California and enhance the integrity of water resources planning and management. This bill provides valuable information to state, regional and local water purveyors to promote better planning which will enable water suppliers to provide a heightened level of reliability and certainty to existing and future customers."

According to the Planning and Conservation League, "SB 820 also advances good public policy by establishing that the process for developing an Urban Water Management Plan (UWMP) will be open and transparent. In addition to being important planning documents, UWMPs provide the basis for compliance with SB 610 and SB 221 that require demonstration of reliable water prior to approval of new development. Because UWMPs provide the basis for these important decisions that affect the reliability of water supplies for entire California communities, it is essential that citizens are involved and participate in the process for developing these plans."

ARGUMENTS IN OPPOSITION : According to the Association of California Water Agencies, "we are very concerned over the vagueness of the new test for determining the reasonableness of use, method of use, or method of

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diversion of water. For example, the language added to Water Code section 100.5 (3) could be interpreted to mean that agricultural beneficial uses could be balanced against urban beneficial uses and vice versa leading to disputes that are unnecessary. We believe it is important to provide greater clarity for determining reasonable use."

According to a coalition of water users, "the State Water Resources Control Board would no longer be the entity responsible for making decisions regarding candidate streams. Instead, this bill delegates the authority to the executive director. The bill provides that the executive director may make the candidate determination based upon her/his best judgment of the likelihood of the board declaring the stream system fully appropriated. Instead of asking that the executive director speculate about the outcome of a board proceeding, we urge you to retain the existing system in which the board makes the determination. This approach would provide the full protection of the board's public hearing and appeal process."

CTW:mel 5/28/05 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

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Date of Hearing: June 28, 2005

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE  
Lois Wolk, Chair  
SB 820 (Kuehl) - As Amended: June 21, 2005

SENATE VOTE : 22-16

SUBJECT : Water use information and planning

SUMMARY : Amends disclosure requirements for certain information as to water use and planning. Specifically, this bill :

- 1) Codifies settlement provision arising out of 1994 "Monterey Agreement" litigation requiring the Department of Water Resources (DWR) to estimate then-existing overall State Water Project (SWP) delivery capability under a range of hydrologic conditions, and deliver such estimates to various local agencies.
- 2) Expands the application of groundwater reporting requirements, including penalties, from four counties in Southern California (Riverside, San Bernardino, Los Angeles and Ventura) to all defined groundwater basins or subbasins, effective January 1, 2007:
  - a) Requires filing of reports of annual groundwater extractions exceeding 25 acre-feet from a State-defined basin or sub-basin with the State Water Resources Control Board (SWRCB), except for groundwater extractions related to:
    - i) extractions less than 10 acre-feet from a single source;
    - ii) electrical power production and other non-consumptive uses;
    - iii) adjudicated groundwater basins where reports are already required;
    - iv) Orange County Water District or Santa Clara Valley Water District;
    - v) production of oil or geothermal energy;
    - vi) groundwater basins managed pursuant to an adopted water basin plan.

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- b) Protects groundwater rights existing as of January 1, 2007, from loss arising out of failure to file the required groundwater reports.
- c) Allows the SWRCB to allow those who fail to file reports to cure such defects under certain conditions.
- d) Allows groundwater users to file reports with SWRCB-designated local agencies or in combination with other users within a groundwater basin or sub-basin.
- e) Imposes penalties for failure to file such reports when required, including:
  - i) denial of state funding from programs at SWRCB, DWR, or the Bay-Delta Authority;
  - ii) legal presumption that failure to file such reports is "equivalent for all purposes to non-use" during the reporting period

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- f) Provides alternative reporting mechanism for participants in groundwater management plans pursuant to Water Code Section 10750 et seq. (AKA "AB 3030 plans"), provided such AB 3030 plans:
  - i) apply to an entire groundwater basin or sub-basin;
  - ii) comply with certain specified requirements, including compliance with certain requirements of AB 3030;
  - iii) are submitted to DWR for review pursuant to criteria that DWR will develop; and
  - iv) are corrected to resolve deficiencies identified by DWR, or lose the opportunity to use this alternative reporting mechanism.
- 3) Establishes consequences for failing to file statements of annual diversion or use for any surface water diversion or use occurring on or after January 1, 2006:
  - a) Deems failure to file required statements of use evidence of non-use in any proceeding in which it is alleged that an appropriative right has ceased because water has not been used.
  - b) Bars those who fail to file required statements from receiving state funds from any program administered by the SWRCB, DWR, or the Bay-Delta Authority.
  - c) Extends existing liability for civil fines to failure to file required reports.
- 4) Adds requirements for already-required urban water management plans to:
  - a) Include analysis of energy produced and used by each of the agency's proposed water strategies for plans due after 2013.
  - b) Clarify the notice and public process for considering such plans.
- 5) Requires agricultural water suppliers to prepare agricultural water management plans:
  - a) Reduces the threshold for requiring the preparation of

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- such plans from the former 50,000 acre-foot threshold to 10,000 acre feet.
- b) Requires analysis of agency's water supplies and uses, including evaluation of reasonable, practical, and cost-effective water conservation activities. States legislative intent that planning efforts be "commensurate with the numbers of customers served and the volume of water supplied."
- c) Requires distribution of such plans to certain state and local agencies and libraries, and posting on either the agency's or DWR's website.
- d) Requires DWR to analyze such plans and report, every

five years, to the Legislature regarding the status of such plans and their effect on promoting efficient agricultural water management practices.

- e) Exempts agricultural water suppliers that submit plans to the Agricultural Water Management Council.
  - f) Denies state funding to agricultural water suppliers that fail to prepare required reports.
  - g) Requires DWR to report on the status of agricultural water management plans.
- 6) Clarifies certain requirements for AB 3030 plans.

EXISTING LAW

- 1) Requires filing of annual groundwater extraction report by groundwater users in four Southern California counties (Riverside, San Bernardino, Los Angeles, and Ventura). Also deems failure to file such required reports as non-use.
- 2) Requires filing of surface water use statements with the SWRCB subject to certain exceptions, including:
  - a) holders of water right permits, which usually require such reports as condition of permit;
  - b) water use reported by DWR in its hydrologic data bulletins.

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Page 5

- 3) Imposes misdemeanor and civil penalties for material misstatements in water use statements.
- 4) Requires urban water suppliers with more than 3,000 customers or selling more than 3,000 acre-feet to develop an urban water management plan.
- 5) Authorizes development of voluntary groundwater management plans (AKA "AB 3030 plans"), under certain conditions.
- 6) Formerly required agricultural water suppliers that supply more than 50,000 acre-feet of water annually for agricultural purposes to develop agricultural water management plans by 1992, but that law expired on January 1, 1993.

FISCAL EFFECT : Uncertain. Senate Appropriations Committee estimated fiscal impact from a previous version of the bill at \$2.915 million, but the author removed or delayed implementation of several of the most costly requirements from the bill. Several remaining requirements may be funded by the current SWRCB fee structure.

COMMENTS : SB 820 is the most comprehensive water use bill for this year. The bill has proceeded through substantial amendments since its introduction, including the most recent amendments the week before the hearing. This analysis therefore focuses on the relatively limited number of issues that remain in dispute.

Author's Intent : SB 820 intends to expand the base of information as to California's groundwater use and use of water for agriculture generally, in order to improve the state's ability to plan for continued future growth and development. More than nine million Californians rely on groundwater as their sole source of supply. California is one of only two states without comprehensive, statewide groundwater regulations (i.e. Texas and California). This bill does not impose any regulation or change groundwater rights law, but improves public access to information about California's groundwater resources.

From the author's perspective, "it is surprising, that, in a state as developed and dependent upon water as ours, we know so little about how people use water, how they manage water, and what they plan to do to meet the needs of our growing

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population. If we are to accommodate growth, preserve agriculture, and protect and restore our natural resources, we need to:

Make water conservation a fundamental duty in water policy. Conservation saves money and water, and it can save electricity too.

Improve the reporting of how water rights holders are using their rights. This would allow local groundwater agencies and other local water managers to more effectively manage their resources.

Make our process for water resources planning more open -- open to those who wish to participate in the planning, and open to those who want to know what the plan is."

Groundwater Reporting : A critical - and controversial - part of SB 820 is its extension of groundwater extraction reports, which pumpers in four Southern California counties have filed since the 1950's, to groundwater basins throughout the state. In the last decade, California has improved management of its groundwater resources, particularly in the Central Valley, from Kern County to Redding. Many of those management improvements arise out of the voluntary groundwater management plans authorized by AB 3030 (1992). SB 820 takes another step in improving that management capability, by expanding the information available to state and local agencies beyond water districts. Such reports and plans allow the broader community, including city and county governments, to learn more about the conditions of the state's valuable and limited water resources, which are owned by the people. (Overlying property owners have only the right to use the water underlying their lands, subject to the limitation of "reasonable use.")

Recent amendments provide an alternative to the extraction report requirement for those who have prepared AB 3030 plans, provided such plans apply to either an entire basin or sub-basin and fulfill certain standards. (The quality of existing AB 3030 plans varies widely.) The basin-wide requirement for the exemption remains the critical final dispute as to the groundwater reporting section. Bill opponents object that some agencies or groundwater users may refuse to participate in AB 3030 plans, which prevents all the other participants from getting the exemption. The author responds that such "hybrid" basins submitting different kinds of information would not improve basin planning because groundwater experts are unable to combine and analyze these different kinds of information. These

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experts can analyze either extraction data or groundwater condition data, but not both together.

Surface Water Diversion Reports : Existing law requires reporting of all water diversions to the SWRCB, except for certain diversions that are reported by other means, and imposes criminal and civil fines for willful misstatements. This requirement includes reporting of uses pursuant to "pre-1914" water rights, which were established before California created its administrative system for water rights in 1914, although there are few penalties for failing to report. SB 820 imposes new penalties for failure to file such required reports, including: 1) an evidentiary presumption in any proceeding alleging forfeiture or abandonment of the water right that unreported use did not occur; 2) specified civil/administrative fines; and 3) ineligibility for funding from State water programs.

Agricultural community representatives have objected to these penalties as excessive. They suggest that, in order to protect their rights, some users may overestimate their use, which might possibly subject them to criminal liability for a willful misstatement. Some acknowledge, however, that agricultural users generally have a good sense of the scope of their water use, if not the precise amount. In a criminal proceeding, prosecutors have the burden of proving "willful" intent to misstate water use, which is a high bar. This criminal penalty does not change under SB 820. Consistent with past history, prosecutions are unlikely, particularly considering the limited prosecutorial resources.

Urban Water Management Plans/Energy : SB 820 does not substantially change requirements for urban water management plans, but merely adds the element of energy production and use arising out of water supply plans to the analysis for such urban plans. It also clarifies the notice and public process for considering adoption of such plans.

Agricultural Water Management Plans : SB 820 also expands the state's efforts to plan for the future of its water resources, by requiring agricultural water management plans for "agricultural water suppliers" that sell more than 10,000 acre-feet of water (instead of the 50,000 acre-feet required by prior law). These water management plan concept originated in 1983 legislation (for urban plans), followed by 1986 legislation

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requiring agricultural water management plans, which expired in 1993. In 1992, Congress required water conservation plans from districts drawing more than 2,000 acre-feet from the Central Valley Project, although smaller districts ultimately received funding to complete those plans. The agricultural water management plans proposed in this bill include analysis of cost-effective water conservation projects to improve water supply reliability, as well as other information that provides a baseline of information as to the State's water resources used for agriculture. The bill also requires submission to, and review by, DWR, which is required to report to the Legislature as to the status of these plans and the results of these requirements. The primary dispute remaining on this issue is the threshold for requiring such plans. The author has indicated that she is considering options for resolving this issue and may present those options at the hearing.

Remaining Issues : As reflected in the list of registered support and opposition, urban water agencies and environmental groups now support SB 820. Some of these urban water agencies had objected to previous versions of the bill. The remaining opponents come primarily from California's agricultural community, with two coalitions have somewhat differing concerns about the bill.

One group, including the California Farm Bureau, disagrees with a fundamental premise of this bill - increased State access to information on water use, particularly related to groundwater. They assert that groundwater is "NOT a matter between landowners and the state." They object to increased groundwater use reporting, penalties for failing to comply with surface water requirements, and agricultural water management plans.

The other group, primarily from the southern part of the Central Valley, has identified four remaining issues and continues to work with the author's office to resolve those issues. The Association of California Water Agencies joined this group on some positions. The four remaining issues include:

Alternative Groundwater Reporting Mechanism. This group proposed language similar to Section 9 (p. 11) of the June 21 version, which provides the alternative reporting mechanism for AB 3030 plan participants. As discussed above, they would like to allow all AB 3030 plan participants, regardless whether they cover the entire basin.

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Penalties. This group objects to the penalties for failing to report surface water use. 50,000 vs. 10,000 Threshold. While they do not object to agricultural water management plans, they would like the requirement to apply to larger districts.

Federal Conservation Plans. This group proposes to allow conservation plans submitted to the Bureau of Reclamation to satisfy the agricultural water management plan requirement.

After substantial negotiation between the author and the opposition, the disputes over SB 820 from those who accept the bill's fundamental premise of additional public information appear to have come down to a comparatively narrow set of issues. The author may propose ways to resolve these final issues at the hearing.

REGISTERED SUPPORT / OPPOSITION :

Support



Attorney General Bill Lockyer  
California Water Impact Network  
Calleguas Municipal Water District  
Central Basin Municipal Water District  
Contra Costa Water District  
East Bay Municipal Utility District  
Inland Empire Utilities Agency  
Marin Municipal Water District  
Metropolitan Water District of So. Cal.  
Mono Lake Committee  
Natural Resources Defense Council  
Olivenhain Municipal Water District  
Planning and Conservation League  
San Diego County Water Authority  
Santa Clara Valley Water District  
Sierra Club  
Southern California Water Committee  
The Nature Conservancy  
West Basin Municipal Water District

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Opposition

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Agricultural Council of California  
Association of California Water Agencies  
CA Agricultural Irrigation Association  
CA Association of Wheat Growers  
CA Association of Winegrape Growers  
CA Bean Shippers Association  
CA Cattlemen's Association  
CA Chamber of Commerce  
CA Citrus Mutual  
CA Cotton Ginners Association  
CA Cotton Growers Association  
CA Farm Bureau Federation  
CA Grain and Feed Association  
CA Grape and Tree Fruit League  
CA Pear Growers Association  
CA Seed Association  
CA Warehouse Association  
CA Women for Agriculture  
Fresno County Farm Bureau  
Greater Fresno Area Chamber of Commerce  
Imperial Irrigation District  
Irvine Ranch Water District  
Kern County Water Agency  
Kings River Conservation District  
Kings River Water Association  
Merced Irrigation District  
Modesto Irrigation District  
Northern California Water Association  
Pacific Egg and Poultry Association  
Rain for Rent  
Regional Council of Rural Counties  
San Joaquin Valley Agr. Water Comm.  
Solano County Water Agency  
Turlock Irrigation District  
Western Growers Association  
Wine Institute  
Zone 7 Water Agency of Alameda County

Analysis Prepared by : Alf W. Brandt / W., P. & W. / (916)  
319-2096

Date of Hearing: August 17, 2005

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Judy Chu, Chair

SB 820 (Kuehl) - As Amended: August 15, 2005

Policy Committee: Water, Parks &  
Wildlife Vote: 8-2

Urgency: No State Mandated Local Program:  
No Reimbursable:

SUMMARY

This bill expands and enhances the processes by which the Department of Water Resources (DWR) and the State Water Resources Control Board (SWRCB) collect and compile data related to the supply of surface water and groundwater to determine the status of existing water supplies and to project future water supply needs.

FISCAL EFFECT

- 1) Potentially significant ongoing costs, up to \$2.5 million annually starting in FY 2007-08, to the SWRCB to receive and process groundwater extraction notices from potentially thousands of new extractors. The actual cost is likely to be less since persons who extract groundwater would be exempt from filing the notices if other conditions are met. The SWRCB is authorized to cover costs associated with processing these notices with revenue generated by a filing fee. (Water Rights Fund.)
- 2) Moderate GF costs, about \$300,000 starting in FY 2012-13 and periodically thereafter, to DWR to include energy-related information in the California Water Plan (CWP).

SUMMARY CONTINUED

Specifically, this bill:

- 1) Expands, starting January 1, 2007 from four counties (Los Angeles, San Bernardino, Riverside, and Ventura) to statewide, the requirement that persons who extract significant volumes

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of groundwater file, with the State Water Resources Control Board (SWRCB), a "Notice of Extraction and Diversion of Water, unless these extractions are made in an area governed by a Groundwater Management Plan (GMP) and information is provided and updated via two other basinwide reporting options.

- 2) Requires GMPs to be updated by local agencies by December 31, 2008 and every five years thereafter and to provide more information on the plan's effectiveness and progress in assuring adequate water supplies, and requires an adopted GMP to be delivered to more entities.
- 3) Reduces the circumstances under which a person who diverts surface water is exempt from reporting statement requirements and makes a person who fails to file a statement ineligible for funds provided by SWRCB, DWR, or the California Bay-Delta Authority (CBDA).
- 4) Requires the California Water Plan (CWP), developed and periodically updated by DWR as the department's "Bulletin 160," to include information on the amount of energy produced and used by various water supply methods and to add to CWP assumptions and estimates the amount of this energy associated with current and projected water supply needs.
- 5) Increases notification and availability requirements for Urban Water Management Plans (UWMPs) by, among other things, adding agencies and other entities that must receive a copy and by requiring an UWMP to be posted on an appropriate website.
- 6) Reinstates and updates the requirement that an agricultural water supplier prepare an Agricultural Water Management Plan

(AWMP), modifies the circumstances under which an AWMP must be prepared, requires an adopted AWMP to be delivered to more entities and be made available on an appropriate website, and requires the AWMP to be updated every five years.

7) Reinstates the requirement that DWR investigate the status of the state's groundwater basins, requires an initial report by January 1, 2010, and an update every five years.

8) Makes any entity who violates the reporting requirements associated with extractions, GMPs, UNMPs, and AWMPs, ineligible for funds provided by the SWRCB, DWR, or the CBDA.

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9) Requires DWR, starting in 2007 and biennially thereafter, to report to State Water Project (SWP) contractors and local and regional water planning departments in the SWP service area on overall water delivery capability and allocations to each contractor and on deliveries and allocations for each of the ten prior years. (This provision codifies the "Monterey Agreement" whereby DWR settle a lawsuit brought by the Planning and Conservation League.)

COMMENTS

Rationale . The author contends that DWR, SWRCB, and other state and local agencies that regulate water supply and water use do not currently have enough data about water supply and water use to enable them to effectively determine current status and to project long-term water supply and water use needs. Because groundwater extractions only have to be reported in four counties and because most groundwater basins are not managed to ensure adequate supply and beneficial use, there is little information available to help ensure the long-term well-being and availability of groundwater supplies in California. The author believes SB 820 expands the base of information on California's groundwater use and use of water, primarily for agriculture. California is one of only two states without a comprehensive, statewide groundwater regulatory system.

Analysis Prepared by : Steve Archibald / APPR. / (916)  
319-2081

SENATE THIRD READING  
SB 820 (Kuehl)  
As Amended: August 25, 2005  
Majority vote

SENATE VOTE :22-16

WATER, PARKS & WILDLIFE      8-2    APPROPRIATIONS      12-4

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Ayes: Wolk, Baca, Berg, Bermudez, Daucher, Dymally, Pavley, Saldaña	Ayes: Chu, Bass, Berg, Karnette, Klehs, Leno, Nation, Oropeza, Laird, Saldana, Yee, Mullin
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Nays: Matthews, Maze	Nays: Sharon Runner, Emmerson, Nakanishi, Walters
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SUMMARY : Amends disclosure requirements for certain information as to water use and planning. Specifically, this bill :

- 1) Codifies certain settlement provision arising out of 1994 "Monterey Agreement" litigation requiring the Department of Water Resources (DWR) to estimate then-existing overall State Water Project (SWP) delivery capability under a range of hydrologic conditions, and deliver such estimates to various local agencies.
  - 2) Expands the application of groundwater reporting requirements, including penalties, from four counties in Southern California (Riverside, San Bernardino, Los Angeles and Ventura) to all defined groundwater basins or subbasins, effective January 1, 2007:
    - a) Requires filing of reports of annual groundwater extractions exceeding 25 acre-feet from a State-defined basin or sub-basin with the State Water Resources Control Board (SWRCB), except for groundwater extractions related to:
      - i) Extractions less than 10 acre-feet from a single source;
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- ii) Electrical power production and other non-consumptive uses;
  - iii) Adjudicated groundwater basins where reports are already required;
  - iv) Orange County Water District or Santa Clara Valley Water District;
  - v) Production of oil or geothermal energy;
  - vi) Groundwater basin areas managed pursuant to an adopted water basin plan; and,
  - vii) Groundwater basins where a local agency has accepted responsibility for consolidating and submitting such reports.
- b) Protects groundwater rights existing as of January 1, 2007, from loss arising out of failure to file the required groundwater reports;
  - c) Allows SWRCB to allow those who fail to file reports to cure such defects under certain conditions;
  - d) Allows groundwater users to file reports with SWRCB-designated local agencies or in combination with other users within a groundwater basin or sub-basin;
  - e) Imposes penalties for failure to file such reports when required, including:
    - i) Denial of state funding from programs at SWRCB, DWR, or the Bay-Delta Authority; and,
    - ii) Legal presumption that failure to file such reports is "equivalent for all purposes to non-use" during the

reporting period

- f) Provides alternative reporting mechanism for participants in groundwater management plans pursuant to Water Code Section 10750 et seq. (AB 3030 plans)
- 3) Establishes consequences for failing to file statements of annual diversion or use for any surface water diversion or use occurring on or after January 1, 2006:
- a) Bars those who fail to file required statements from receiving state funds from any program administered by SWRCB, DWR, or the Bay-Delta Authority; and,

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- b) Extends existing liability for civil fines to failure to file required reports.
- 4) Adds requirements for already-required urban water management plans and State Water Plan to include energy production information and provide certain notice and public process.
- 5) Requires agricultural water suppliers to prepare agricultural water management plans:
- a) Requires DWR to study the threshold for requiring such plans;
  - b) Requires analysis of agency's water supplies and uses, including evaluation of reasonable, practical, and cost-effective water conservation activities. States legislative intent that planning efforts be "commensurate with the numbers of customers served and the volume of water supplied;"
  - c) Requires distribution of such plans to certain state and local agencies and libraries, and posting on either the agency's or DWR's Web site;
  - d) Requires DWR to analyze such plans and report, every five years, to the Legislature regarding the status of such plans and their effect on promoting efficient agricultural water management practices;
  - e) Denies state funding to agricultural water suppliers that fail to prepare required reports; and,
  - f) Requires DWR to report on the status of agricultural water management plans.

EXISTING LAW :

- 1) Requires filing of annual groundwater extraction report by groundwater users in four Southern California counties (Riverside, San Bernardino, Los Angeles, and Ventura). Deems failure to file such required reports as non-use.
- 2) Requires filing of surface water use statements with SWRCB

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subject to certain exceptions, including:

- a) Holders of water right permits, which usually require such reports as condition of permit; and,
  - b) Water use reported by DWR in its hydrologic data bulletins.
- 3) Imposes misdemeanor and civil penalties for material misstatements in water use statements.
- 4) Requires urban water suppliers with more than 3,000 customers or selling more than 3,000 acre-feet to develop an urban water management plan.

- 5) Authorizes development of voluntary AB 3030 plans, under certain conditions.
- 6) Formerly required agricultural water suppliers that supply more than 50,000 acre-feet of water annually for agricultural purposes to develop agricultural water management plans by 1992, but that law expired on January 1, 1993.

FISCAL EFFECT : Assembly Appropriations Committee estimated moderate, non-recoverable, annual, costs (approximately \$800,000) to DWR to conduct groundwater and agricultural water supply activities. The significant SWRCB costs (possibly as much as \$2.9 million) can be recovered by filing fees deposited in the Water Rights Fund.

COMMENTS :

- 1) This bill is the most comprehensive water use bill for this year and has proceeded through numerous and substantial amendments since its introduction. At this point, this bill is narrower and amendments have resolved the issues raised by the vast majority of opponents, particularly agricultural water agencies required to prepare agricultural water management plans. Parties representing production agriculture still have concerns about any expanded collection of groundwater information and the agricultural water management plans.
- 2) Author's intent: This bill intends to expand the base of

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information as to California's groundwater use and use of water for agriculture generally, in order to improve the state's ability to plan for continued future growth and development. More than nine million Californians rely on groundwater as their sole source of supply. California is one of only two states without any comprehensive, statewide groundwater monitoring or regulation (i.e. Texas and California). This bill does not impose any regulation or change groundwater rights law, but improves public access to information about California's groundwater and agricultural water resources.

- 3) Groundwater reporting: A critical, and controversial, part of this bill is its extension of groundwater extraction reports, which pumpers in four Southern California counties have filed since the 1950s, to groundwater basins throughout the state. In the last decade, California has improved management of its groundwater resources, particularly in the Central Valley, due mostly to the AB 3030 plans authorized by AB 3030 (1992). SB 820 takes another step in improving that management capability, by expanding the information available to state and local agencies beyond water districts. Such reports and plans allow the broader community, including city and county governments, to learn more about the conditions of the state's valuable and limited water resources, which are owned by the people. (Overlying property owners have only the right to use the water underlying their lands, subject to the limitation of "reasonable use.")

SB 820 promotes voluntary AB 3030 plans, by allowing groundwater pumpers who participate in such voluntary management efforts to rely on such AB 3030 plans to fulfill the groundwater reporting requirements, provided such plans fulfill certain standards. (The quality of existing AB 3030 plans varies widely.) This alternative to individual groundwater reporting facilitates individual compliance with the groundwater reporting requirements and offers a valuable incentive to collaborate in voluntary groundwater management efforts.

- 4) Surface water diversion reports: Existing law requires reporting of all water diversions to SWRCB, except for certain diversions that are reported by other means, and imposes criminal and civil fines for willful misstatements.

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This bill now only extends existing penalties for the failure to file such required reports, including the civil/administrative fines and ineligibility for funding from State water programs.

- 5) Urban water management plans/energy: This bill does not substantially change requirements for urban water management plans, but merely adds the element of energy production and use arising out of water supply plans to the analysis for such urban plans. It also clarifies the notice and public process for considering adoption of such plans.
- 6) Agricultural water management plans: This bill also expands the state's efforts to plan for the future of its water resources, by requiring agricultural water management plans for "agricultural water suppliers." This water management plan concept originated in 1983 legislation (for urban plans), followed by 1986 legislation requiring agricultural water management plans, which expired in 1993. In 1992, Congress required water conservation plans from districts drawing more than 2,000 acre-feet from the Central Valley Project, although smaller districts ultimately received funding to complete those plans. The agricultural water management plans proposed in this bill include analysis of cost-effective water conservation projects to improve water supply reliability, as well as other information that provides a baseline of information as to the State's water resources used for agriculture. The bill also requires submission to, and review by, DWR, which is required to report to the Legislature as to the status of these plans, in general, and the results of these requirements. The previous dispute over the threshold for requiring such plans (i.e. 10,000 acre-feet vs. 50,000 acre-feet) has been resolved by requiring DWR to study and assess the appropriate threshold.

Analysis Prepared by : Alf W. Brandt / W., P. & W. / (916)  
319-2096

FN: 0012460



SENATE THIRD READING  
SB 820 (Kuehl)  
As Amended September 2, 2005  
Majority vote

SENATE VOTE : 22-16

WATER, PARKS & WILDLIFE 8-2 APPROPRIATIONS 12-4

Ayes: Wolk, Baca, Berg, Bermudez, Daucher, Dymally, Pavley, Saldaña	Ayes: Chu, Bass, Berg, Karnette, Klehs, Leno, Nation, Oropeza, Laird, Saldana, Yee, Mullin
Nays: Matthews, Maze	Nays: Sharon Runner, Emmerson, Nakanishi, Walters

SUMMARY : Amends disclosure requirements for certain information as to water use and planning. Specifically, this bill :

- 1) Codifies certain settlement provision arising out of 1994 "Monterey Agreement" litigation requiring the Department of Water Resources (DWR) to estimate then-existing overall State Water Project (SWP) delivery capability under a range of hydrologic conditions, and deliver such estimates to various local agencies.
- 2) Expands the application of groundwater reporting requirements from four counties in Southern California (Riverside, San Bernardino, Los Angeles and Ventura) to all defined groundwater basins or subbasins, effective January 1, 2007:
  - a) Requires filing of reports of annual groundwater extractions exceeding 25 acre-feet from a State-defined basin or sub-basin with the State Water Resources Control Board (SWRCB), except for groundwater extractions related to:
    - i) Extractions less than 10 acre-feet from a single source;
    - ii) Electrical power production and other non-consumptive uses;

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- iii) Adjudicated groundwater basins where reports are already required;
    - iv) Orange County Water District or Santa Clara Valley Water District;
    - v) Production of oil or geothermal energy;
    - vi) Groundwater basin areas managed pursuant to an adopted water basin plan; and,
    - vii) Groundwater basins where a local agency has accepted responsibility for consolidating and submitting such reports;
  - b) Repeals, effective January 1, 2008, the current legal presumption that failure to report groundwater pumping in the four Southern California counties equals non-use;
  - c) Imposes penalties for failure to file such reports when required, including:
    - i) Civil fine liability, up to \$500 for each violation; and,
    - ii) Denial of state funding from programs at SWRCB, DWR, or the Bay-Delta Authority;
  - d) Allows SWRCB to allow those who fail to file reports to cure such defects under certain conditions. Allows SWRCB to issue warning upon first offense and to determine specific fine amount based on identified factors related to the circumstances surrounding the violation;
  - e) Allows groundwater users to file reports with SWRCB-designated local agencies or in combination with other users within a groundwater basin or sub-basin; and,

- f) Provides alternative reporting mechanism for participants in groundwater management plans pursuant to Water Code Section 10750 et seq. (AB 3030 plans)
- 3) Establishes consequences for failing to file statements of annual diversion or use for any surface water diversion or use occurring on or after January 1, 2006:
  - a) Bars those who fail to file required statements from receiving state funds from any program administered by SWRCB, DWR, or the Bay-Delta Authority; and,

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- b) Extends existing liability for civil fines to failure to file required reports.
- 4) Adds requirements for already-required urban water management plans and State Water Plan to include energy production information and provide certain notice and public process.
- 5) Requires agricultural water suppliers to prepare agricultural water management plans:
  - a) Requires DWR to study the threshold for requiring such plans;
  - b) Requires analysis of agency's water supplies and uses, including evaluation of reasonable, practical, and cost-effective water conservation activities. States legislative intent that planning efforts be "commensurate with the numbers of customers served and the volume of water supplied;"
  - c) Requires distribution of such plans to certain state and local agencies and libraries, and posting on either the agency's or DWR's Web site;
  - d) Requires DWR to analyze such plans and report, every five years, to the Legislature regarding the status of such plans and their effect on promoting efficient agricultural water management practices;
  - e) Denies state funding to agricultural water suppliers that fail to prepare required reports; and,
  - f) Requires DWR to report on the status of agricultural water management plans.

EXISTING LAW :

- 1) Requires filing of annual groundwater extraction report by groundwater users in four Southern California counties (Riverside, San Bernardino, Los Angeles, and Ventura). Deems failure to file such required reports as non-use.

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- 2) Requires filing of surface water use statements with SWRCB subject to certain exceptions, including:
  - a) Holders of water right permits, which usually require such reports as condition of permit; and,
  - b) Water use reported by DWR in its hydrologic data bulletins.
- 3) Imposes misdemeanor and civil penalties for material misstatements in water use statements.
- 4) Requires urban water suppliers with more than 3,000 customers or selling more than 3,000 acre-feet to develop an urban water management plan.

- 5) Authorizes development of voluntary AB 3030 plans, under certain conditions.
- 6) Formerly required agricultural water suppliers that supply more than 50,000 acre-feet of water annually for agricultural purposes to develop agricultural water management plans by 1992, but that law expired on January 1, 1993.

FISCAL EFFECT : Assembly Appropriations Committee estimated moderate, non-recoverable, annual, costs (approximately \$800,000) to DWR to conduct groundwater and agricultural water supply activities. The significant SWRCB costs (possibly as much as \$2.9 million) can be recovered by filing fees deposited in the Water Rights Fund.

COMMENTS :

- 1) This bill is the most comprehensive water use bill for this year and has proceeded through numerous and substantial amendments since its introduction. At this point, this bill is narrower and amendments have resolved the issues raised by the vast majority of opponents, particularly agricultural water agencies required to prepare agricultural water management plans. Parties representing production agriculture still have concerns about any expanded collection of groundwater information and the agricultural water management plans.
- 2) Author's intent: This bill intends to expand the base of

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information as to California's groundwater use and use of water for agriculture generally, in order to improve the state's ability to plan for continued future growth and development. More than nine million Californians rely on groundwater as their sole source of supply. California is one of only two states without any comprehensive, statewide groundwater monitoring or regulation (i.e. Texas and California). This bill does not impose any regulation or change groundwater rights law, but improves public access to information about California's groundwater and agricultural water resources.

- 3) Groundwater reporting: A critical, and controversial, part of this bill is its extension of groundwater extraction reports, which pumpers in four Southern California counties have filed since the 1950s, to groundwater basins throughout the state. While extending these groundwater reporting requirements, the bill, in effect, reduces penalties for groundwater users in the four-county region, by repealing a legal presumption that non-reporting equals non-use. As to other penalties, the bill extends civil fines, up to \$500 (which now apply only to material misstatements in certain water supply reports), and denies State water-related funding for failure to file required reports.

In the last decade, California has improved management of its groundwater resources, particularly in the Central Valley, due mostly to the AB 3030 plans authorized by AB 3030 (1992). SB 820 takes another step in improving that management capability, by expanding the information available to state and local agencies beyond water districts. Such reports and plans allow the broader community, including city and county governments, to learn more about the conditions of the state's valuable and limited water resources, which are owned by the people. (Overlying property owners have only the right to use the water underlying their lands, subject to the limitation of "reasonable use.")

SB 820 promotes voluntary AB 3030 plans, by allowing groundwater pumpers who participate in such voluntary management efforts to rely on such AB 3030 plans to fulfill the groundwater reporting requirements, provided such plans fulfill certain standards. (The quality of existing AB 3030 plans varies widely.) This alternative to individual groundwater reporting facilitates individual compliance with

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SB 820

the groundwater reporting requirements and offers a valuable incentive to collaborate in voluntary groundwater management efforts.

- 4) Surface water diversion reports: Existing law requires reporting of all water diversions to SWRCB, except for certain diversions that are reported by other means, and imposes criminal and civil fines for willful misstatements. This bill now only extends existing penalties for the failure to file such required reports, including the civil/administrative fines and ineligibility for funding from State water programs.
- 5) Urban water management plans/energy: This bill does not substantially change requirements for urban water management plans, but merely adds the element of energy production and use arising out of water supply plans to the analysis for such urban plans. It also clarifies the notice and public process for considering adoption of such plans.
- 6) Agricultural water management plans: This bill also expands the state's efforts to plan for the future of its water resources, by requiring agricultural water management plans for "agricultural water suppliers." This water management plan concept originated in 1983 legislation (for urban plans), followed by 1986 legislation requiring agricultural water management plans, which expired in 1993. In 1992, Congress required water conservation plans from districts drawing more than 2,000 acre-feet from the Central Valley Project, although smaller districts ultimately received funding to complete those plans.

The agricultural water management plans proposed in this bill include analysis of cost-effective water conservation projects to improve water supply reliability, as well as other information that provides a baseline of information as to the State's water resources used for agriculture. The bill also requires submission to, and review by, DWR, which is required to report to the Legislature as to the status of these plans, in general, and the results of these requirements. The previous dispute over the threshold for requiring such plans (i.e. 10,000 acre-feet vs. 50,000 acre-feet) has been resolved by requiring DWR to study and assess the appropriate threshold.

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SENATE RULES COMMITTEE	SB 820
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614	Fax: (916)
327-4478	

## UNFINISHED BUSINESS

Bill No: SB 820  
 Author: Kuehl (D), et al  
 Amended: 9/2/05  
 Vote: 21

SENATE NATURAL RESOURCES & WATER COMM. : 7-3, 4/26/05  
 AYES: Kuehl, Bowen, Kehoe, Lowenthal, Machado, Migden,  
 Romero  
 NOES: Aanestad, Dutton, Hollingsworth  
 NO VOTE RECORDED: Margett

SENATE APPROPRIATIONS COMMITTEE : 8-5, 5/26/05  
 AYES: Migden, Alarcon, Alquist, Escutia, Florez, Murray,  
 Ortiz, Romero  
 NOES: Aanestad, Ashburn, Battin, Dutton, Poochigian

SENATE FLOOR : 22-16, 5/31/05  
 AYES: Alarcon, Alquist, Bowen, Cedillo, Chesbro, Dunn,  
 Escutia, Figueroa, Kehoe, Kuehl, Lowenthal, Machado,  
 Migden, Murray, Ortiz, Perata, Romero, Scott, Simitian,  
 Soto, Torlakson, Vincent  
 NOES: Aanestad, Ackerman, Ashburn, Battin, Campbell, Cox,  
 Denham, Ducheny, Dutton, Florez, Maldonado, Margett,  
 McClintock, Morrow, Poochigian, Runner  
 NO VOTE RECORDED: Hollingsworth, Speier

ASSEMBLY FLOOR : 49-27, 09/07/05 - See last page for vote

SUBJECT : Water

SOURCE : Author

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DIGEST : This bill amends disclosure requirements for certain information as to water use and planning.

Assembly Amendments : (1) Delete the provisions regarding reasonable use. (2) Create additional exemptions from the groundwater reporting requirements for (a) groundwater areas managed under AB 3030 plans, (b) groundwater areas managed by entities, such as counties, under a groundwater plan that is substantively similar to AB 3030 plans, and (c) groundwater areas managed as a part of a regional water management plan. (3) Delete groundwater and surface water reporting provisions that would have deemed failing to file reports as equivalent to nonuse. (4) Establish civil penalties for failing to file required groundwater water reports. (5) Require the Department of Water Resources (DWR) to conduct a survey of agricultural water agencies to gather data, assess and analyze that data, and recommend the appropriate minimum size of a water agency that should prepare an agricultural water management plan. DWR is to report its findings and recommendations to the Governor and the Legislature before January 1, 2007. (6) Require DWR to update the departments groundwater report by January 1, 2010, and thereafter in years ending in five and zero. (7) Require DWR, as a part of the groundwater report due by January 1, 2010, to assess the effectiveness of the groundwater management reports that were submitted pursuant to the groundwater reporting exemptions.

ANALYSIS :

Existing law:

1. Requires filing of annual groundwater extraction report by groundwater users in four Southern California counties (Riverside, San Bernardino, Los Angeles, and Ventura). Deems failure to file such required reports as non-use.
2. Requires filing of surface water use statements with the State Water Resources Control Board (SWRCB) subject to certain exceptions, including (a) holders of water right permits, which usually require such reports as condition

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of permit, and (b) water use reported by DWR in its hydrologic data bulletins.

3. Imposes misdemeanor and civil penalties for material misstatements in water use statements.
4. Requires urban water suppliers with more than 3,000 customers or selling more than 3,000 acre-feet to develop an urban water management plan.
5. Authorizes development of voluntary AB 3030 plans, under certain conditions.
6. Formerly required agricultural water suppliers that supply more than 50,000 acre-feet of water annually for agricultural purposes to develop agricultural water management plans by 1992, but that law expired on January 1, 1993.

This bill:

1. Codifies certain settlement provision arising out of 1994 "Monterey Agreement" litigation requiring DWR to estimate then-existing overall State Water Project (SWP) delivery capability under a range of hydrologic conditions, and deliver such estimates to various local agencies.
2. Expands the application of groundwater reporting requirements from four counties in Southern California (Riverside, San Bernardino, Los Angeles and Ventura) to all defined groundwater basins or subbasins, effective January 1, 2007:
  - A. Requires filing of reports of annual groundwater extractions exceeding 25 acre-feet from a state-defined basin or sub-basin with the SWRCB, except for groundwater extractions related to (1) extractions less than 10 acre-feet from a single source, (2) electrical power production and other non-consumptive uses, (3) adjudicated groundwater basins where reports are already required, (4) Orange County Water District or Santa Clara Valley Water District, (5) production of oil or geothermal energy,

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(6) groundwater basin areas managed pursuant to an adopted water basin plan, and (7) groundwater basins where a local agency has accepted responsibility for consolidating and submitting such reports.

- B. Repeals, effective January 1, 2008, the current legal presumption that failure to report groundwater pumping in the four Southern California counties equals non-use.
- C. Imposes penalties for failure to file such reports when required, including (1) civil fine liability, up to \$500 for each violation, and (2) denial of state funding from programs at SWRCB, DWR, or the Bay-Delta Authority.
- D. Allows SWRCB to allow those who fail to file



reports to cure such defects under certain conditions. Allows SWRCB to issue warning upon first offense and to determine specific fine amount based on identified factors related to the circumstances surrounding the violation.

- E. Allows groundwater users to file reports with SWRCB-designated local agencies or in combination with other users within a groundwater basin or sub-basin.
  - F. Provides alternative reporting mechanism for participants in groundwater management plans pursuant to Section 10750 et seq. of the Water Code (AB 3030 plans).
3. Establishes consequences for failing to file statements of annual diversion or use for any surface water diversion or use occurring on or after January 1, 2006:
- A. Bars those who fail to file required statements from receiving state funds from any program administered by SWRCB, DWR, or the Bay-Delta Authority.
  - B. Extends existing liability for civil fines to failure to file required reports.

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4. Adds requirements for already-required urban water management plans and State Water Plan to include energy production information and provide certain notice and public process.
5. Requires agricultural water suppliers to prepare agricultural water management plans:
- A. Requires DWR to study the threshold for requiring such plans.
  - B. Requires analysis of agency's water supplies and uses, including evaluation of reasonable, practical, and cost-effective water conservation activities. States legislative intent that planning efforts be "commensurate with the numbers of customers served and the volume of water supplied."
  - C. Requires distribution of such plans to certain state and local agencies and libraries, and posting on either the agency's or DWR's web site.
  - D. Requires DWR to analyze such plans and report, every five years, to the Legislature regarding the status of such plans and their effect on promoting efficient agricultural water management practices.
  - E. Denies state funding to agricultural water suppliers that fail to prepare required reports.
  - F. Requires DWR to report on the status of agricultural water management plans.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: No

Assembly Appropriations Committee estimated moderate, non-recoverable, annual, costs (approximately \$800,000) to DWR to conduct groundwater and agricultural water supply activities. The significant SWRCB costs (possibly as much as \$2.9 million) can be recovered by filing fees deposited in the Water Rights Fund.

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SB 820  
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SUPPORT : (Verified 9/8/05)

Attorney General Bill Lockyer  
 California Municipal Utilities Association  
 California Urban Water Conservation Council  
 California Water Impact Network  
 Calleguas Municipal Water District  
 Castaic Lake Water Authority  
 Central Basin Municipal Water District  
 City of Los Angeles  
 Contra Costa Water District  
 East Bay Municipal Utility District  
 Eastern Municipal Water District  
 Inland Empire Utilities Agency  
 Las Virgenes Municipal Water District  
 Long Beach Water Department  
 Los Angeles Department of Water and Power  
 Marin Municipal Water District  
 Metropolitan Water District of Southern California  
 Mono Lake Committee  
 Municipal Water District Of Orange County  
 Natural Resources Defense Council  
 Olivenhain Municipal Water District  
 Orange County Water District  
 Planning and Conservation League  
 San Diego County Water Authority  
 Santa Clara Valley Water District  
 Sierra Club  
 Solano County Water Agency  
 Southern California Water Committee  
 The Nature Conservancy  
 Water Replenishment District of Southern California  
 West Basin Municipal Water District

OPPOSITION : (Verified 9/8/05)

a.a Marthedal Co., Inc.  
 Agricultural Council of California  
 AKT Development  
 California Agricultural Irrigation Association  
 California Association Of Wheat Growers  
 California Association Of Winegrape Growers  
 California Bean Shippers Association  
 California Business Furnishings

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California Cattlemen's Association  
 California Chamber Of Commerce  
 California Citrus Mutual  
 California Cotton Ginners Association  
 California Cotton Growers Association  
 California Farm Bureau Federation  
 California Grain And Feed Association  
 California Grape And Tree Fruit League  
 California Pear Growers Association  
 California Seed Association  
 California State Association Of Counties  
 California Warehouse Association  
 California Women For Agriculture  
 County of Siskiyou  
 Department of Finance  
 Fresno County Farm Bureau  
 Greater Fresno Area Chamber of Commerce  
 Nisei Farmers League  
 Northern California Water Association  
 Pacific Egg and Poultry Association  
 Palmate Packing Company, Inc.  
 P-R Farms, Inc.  
 Rain for Rent  
 Regional Council of Rural Counties  
 Western Growers Association  
 Wine Institute

ARGUMENTS IN SUPPORT : The Metropolitan Water District of Southern California notes this bill "will strengthen water conservation policy, increase an understanding of water use in California and enhance the integrity of water resources planning and management. This bill provides valuable information to state, regional and local water purveyors to promote better planning which will enable water suppliers to provide a heightened level of reliability and certainty to existing and future customers."

According to the Planning and Conservation League, "SB 820 also advances good public policy by establishing that the process for developing an Urban Water Management Plan (UWMP) will be open and transparent. In addition to being important planning documents, UWMPs provide the basis for

compliance with SB 610 and SB 221 that require demonstration of reliable water prior to approval of new

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development. Because UWMPs provide the basis for these important decisions that affect the reliability of water supplies for entire California communities, it is essential that citizens are involved and participate in the process for developing these plans."

ARGUMENTS IN OPPOSITION : In opposing the bill, the Fresno County Farm Bureau writes, "First and foremost, this is another regulation/tax burden on our California agriculturalists. The targeting of agriculture by recent state legislation has had a cumulative effect that when added together has a tremendous negative effect on farmers. This legislation adds to this burden while not guaranteeing any more benefit to state planning. If the state wants this information, they should have to absorb the cost, not the individual farmer/rancher.

ASSEMBLY FLOOR :  
AYES: Baca, Bass, Berg, Bermudez, Calderon, Canciamilla, Chan, Chavez, Chu, Cohn, Coto, Daucher, De La Torre, Dymally, Emmerson, Evans, Frommer, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Jones, Karnette, Klehs, Koretz, La Suer, Laird, Leno, Levine, Lieber, Liu, Montanez, Mullin, Nation, Negrete McLeod, Oropeza, Pavley, Ridley-Thomas, Ruskin, Saldana, Spitzer, Torrico, Tran, Umberg, Vargas, Wolk, Yee, Nunez  
NOES: Aghazarian, Arambula, Blakeslee, Bogh, Cogdill, DeVore, Garcia, Haynes, Houston, Huff, Keene, La Malfa, Leslie, Matthews, Maze, McCarthy, Mountjoy, Nakanishi, Niello, Parra, Plescia, Richman, Sharon Runner, Strickland, Villines, Walters, Wyland  
NO VOTE RECORDED: Benoit, Nava, Salinas, Vacancy

CTW:mel 9/8/05 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

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SENATE RULES COMMITTEE	SB 820
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614	Fax: (916)
327-4478	

VETO

Bill No: SB 820  
 Author: Kuehl (D), et al  
 Amended: 9/2/05  
 Vote: 21

SENATE NATURAL RESOURCES & WATER COMM. : 7-3, 4/26/05  
 AYES: Kuehl, Bowen, Kehoe, Lowenthal, Machado, Migden,  
 Romero  
 NOES: Aanestad, Dutton, Hollingsworth  
 NO VOTE RECORDED: Margett

SENATE APPROPRIATIONS COMMITTEE : 8-5, 5/26/05  
 AYES: Migden, Alarcon, Alquist, Escutia, Florez, Murray,  
 Ortiz, Romero  
 NOES: Aanestad, Ashburn, Battin, Dutton, Poochigian

SENATE FLOOR : 21-16, 9/8/05  
 AYES: Alarcon, Alquist, Bowen, Cedillo, Chesbro, Dunn,  
 Escutia, Figueroa, Kehoe, Kuehl, Lowenthal, Machado,  
 Margett, Migden, Perata, Romero, Scott, Simitian, Soto,  
 Speier, Torlakson  
 NOES: Aanestad, Ackerman, Ashburn, Battin, Campbell, Cox,  
 Denham, Ducheny, Dutton, Florez, Hollingsworth,  
 Maldonado, McClintock, Morrow, Poochigian, Runner  
 NO VOTE RECORDED: Murray, Ortiz, Vincent

ASSEMBLY FLOOR : 49-27, 9/7/05 - See last page for vote

SUBJECT : Water

SOURCE : Author

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DIGEST : This bill amends disclosure requirements for certain information as to water use and planning.

Assembly Amendments : (1) Delete the provisions regarding reasonable use. (2) Create additional exemptions from the groundwater reporting requirements for (a) groundwater areas managed under AB 3030 plans, (b) groundwater areas managed by entities, such as counties, under a groundwater plan that is substantively similar to AB 3030 plans, and (c) groundwater areas managed as a part of a regional water management plan. (3) Delete groundwater and surface water reporting provisions that would have deemed failing to file reports as equivalent to nonuse. (4) Establish civil penalties for failing to file required groundwater water reports. (5) Require the Department of Water Resources (DWR) to conduct a survey of agricultural water agencies to gather data, assess and analyze that data, and recommend the appropriate minimum size of a water agency that should prepare an agricultural water management plan. DWR is to report its findings and recommendations to the Governor and the Legislature before January 1, 2007. (6) Require DWR to update the departments groundwater report by January 1, 2010, and thereafter in years ending in five and zero. (7) Require DWR, as a part of the groundwater report due by January 1, 2010, to assess the effectiveness of the groundwater management reports that were submitted pursuant to the groundwater reporting exemptions.

ANALYSIS :

Existing law:

1. Requires filing of annual groundwater extraction report by groundwater users in four Southern California counties (Riverside, San Bernardino, Los Angeles, and Ventura). Deems failure to file such required reports as non-use.
2. Requires filing of surface water use statements with the State Water Resources Control Board (SWRCB) subject to certain exceptions, including (a) holders of water right permits, which usually require such reports as condition

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of permit, and (b) water use reported by DWR in its hydrologic data bulletins.

3. Imposes misdemeanor and civil penalties for material misstatements in water use statements.
4. Requires urban water suppliers with more than 3,000 customers or selling more than 3,000 acre-feet to develop an urban water management plan.
5. Authorizes development of voluntary AB 3030 plans, under certain conditions.
6. Formerly required agricultural water suppliers that supply more than 50,000 acre-feet of water annually for agricultural purposes to develop agricultural water management plans by 1992, but that law expired on January 1, 1993.

This bill:

1. Codifies certain settlement provision arising out of 1994 "Monterey Agreement" litigation requiring DWR to estimate then-existing overall State Water Project (SWP) delivery capability under a range of hydrologic conditions, and deliver such estimates to various local agencies.
2. Expands the application of groundwater reporting requirements from four counties in Southern California (Riverside, San Bernardino, Los Angeles and Ventura) to all defined groundwater basins or subbasins, effective January 1, 2007:
  - A. Requires filing of reports of annual groundwater extractions exceeding 25 acre-feet from a state-defined basin or sub-basin with the SWRCB, except for groundwater extractions related to (1) extractions less than 10 acre-feet from a single source, (2) electrical power production and other non-consumptive uses, (3) adjudicated groundwater basins where reports are already required, (4) Orange County Water District or Santa Clara Valley Water District, (5) production of oil or geothermal energy,

□

SB 820  
Page

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(6) groundwater basin areas managed pursuant to an adopted water basin plan, and (7) groundwater basins where a local agency has accepted responsibility for consolidating and submitting such reports.

- B. Repeals, effective January 1, 2008, the current legal presumption that failure to report groundwater pumping in the four Southern California counties equals non-use.
- C. Imposes penalties for failure to file such reports when required, including (1) civil fine liability, up to \$500 for each violation, and (2) denial of state funding from programs at SWRCB, DWR, or the Bay-Delta Authority.
- D. Allows SWRCB to allow those who fail to file

reports to cure such defects under certain conditions. Allows SWRCB to issue warning upon first offense and to determine specific fine amount based on identified factors related to the circumstances surrounding the violation.

- E. Allows groundwater users to file reports with SWRCB-designated local agencies or in combination with other users within a groundwater basin or sub-basin.
  - F. Provides alternative reporting mechanism for participants in groundwater management plans pursuant to Section 10750 et seq. of the Water Code (AB 3030 plans).
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4. Adds requirements for already-required urban water management plans and State Water Plan to include energy production information and provide certain notice and public process.
5. Requires agricultural water suppliers to prepare agricultural water management plans:
- A. Requires DWR to study the threshold for requiring such plans.
  - B. Requires analysis of agency's water supplies and uses, including evaluation of reasonable, practical, and cost-effective water conservation activities. States legislative intent that planning efforts be "commensurate with the numbers of customers served and the volume of water supplied."
  - C. Requires distribution of such plans to certain state and local agencies and libraries, and posting on either the agency's or DWR's web site.
  - D. Requires DWR to analyze such plans and report, every five years, to the Legislature regarding the status of such plans and their effect on promoting efficient agricultural water management practices.
  - E. Denies state funding to agricultural water suppliers that fail to prepare required reports.
  - F. Requires DWR to report on the status of agricultural water management plans.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: No

Assembly Appropriations Committee estimated moderate, non-recoverable, annual, costs (approximately \$800,000) to DWR to conduct groundwater and agricultural water supply activities. The significant SWRCB costs (possibly as much as \$2.9 million) can be recovered by filing fees deposited in the Water Rights Fund.

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SUPPORT : (Verified 9/8/05)

Attorney General Bill Lockyer  
 California Municipal Utilities Association  
 California Urban Water Conservation Council  
 California Water Impact Network  
 Calleguas Municipal Water District  
 Castaic Lake Water Authority  
 Central Basin Municipal Water District  
 City of Los Angeles  
 Contra Costa Water District  
 East Bay Municipal Utility District  
 Eastern Municipal Water District  
 Inland Empire Utilities Agency  
 Las Virgenes Municipal Water District  
 Long Beach Water Department  
 Los Angeles Department of Water and Power  
 Marin Municipal Water District  
 Metropolitan Water District of Southern California  
 Mono Lake Committee  
 Municipal Water District Of Orange County  
 Natural Resources Defense Council  
 Olivenhain Municipal Water District  
 Orange County Water District  
 Planning and Conservation League  
 San Diego County Water Authority  
 Santa Clara Valley Water District  
 Sierra Club  
 Solano County Water Agency  
 Southern California Water Committee  
 The Nature Conservancy  
 Water Replenishment District of Southern California  
 West Basin Municipal Water District

OPPOSITION : (Verified 9/8/05)

a.a Marthedal Co., Inc.  
 Agricultural Council of California  
 AKT Development  
 California Agricultural Irrigation Association  
 California Association Of Wheat Growers  
 California Association Of Winegrape Growers  
 California Bean Shippers Association  
 California Business Furnishings

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California Cattlemen's Association  
 California Chamber Of Commerce  
 California Citrus Mutual  
 California Cotton Ginners Association  
 California Cotton Growers Association  
 California Farm Bureau Federation  
 California Grain And Feed Association  
 California Grape And Tree Fruit League  
 California Pear Growers Association  
 California Seed Association  
 California State Association Of Counties  
 California Warehouse Association  
 California Women For Agriculture  
 County of Siskiyou  
 Department of Finance  
 Fresno County Farm Bureau  
 Greater Fresno Area Chamber of Commerce  
 Nisei Farmers League  
 Northern California Water Association  
 Pacific Egg and Poultry Association  
 Palmate Packing Company, Inc.  
 P-R Farms, Inc.  
 Rain for Rent  
 Regional Council of Rural Counties  
 Western Growers Association  
 Wine Institute

ARGUMENTS IN SUPPORT : The Metropolitan Water District of Southern California notes this bill "will strengthen water conservation policy, increase an understanding of water use in California and enhance the integrity of water resources planning and management. This bill provides valuable information to state, regional and local water purveyors to promote better planning which will enable water suppliers to provide a heightened level of reliability and certainty to existing and future customers."

According to the Planning and Conservation League, "SB 820 also advances good public policy by establishing that the process for developing an Urban Water Management Plan (UWMP) will be open and transparent. In addition to being important planning documents, UWMPs provide the basis for



compliance with SB 610 and SB 221 that require demonstration of reliable water prior to approval of new

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development. Because UWMPs provide the basis for these important decisions that affect the reliability of water supplies for entire California communities, it is essential that citizens are involved and participate in the process for developing these plans."

ARGUMENTS IN OPPOSITION : In opposing the bill, the Fresno County Farm Bureau writes, "First and foremost, this is another regulation/tax burden on our California agriculturalists. The targeting of agriculture by recent state legislation has had a cumulative effect that when added together has a tremendous negative effect on farmers.

This legislation adds to this burden while not guaranteeing any more benefit to state planning. If the state wants this information, they should have to absorb the cost, not the individual farmer/rancher.

GOVERNOR'S VETO MESSAGE:

"This bill is a very comprehensive measure that attempts to address a host of water rights issues, including surface and groundwater, in one bill. While the author should be recognized for the effort on urban water management plans, energy consumption associated with water use, and surface water diversion reports, the bill is flawed by only reviewing half the groundwater equation. By mandating extraction reports without analysis of recharge, groundwater quality, basin composition, and other issues essential to understanding the health of the groundwater basin, this bill creates a significant burden on property owners that will not provide the information necessary to lead to sustainable decision making.

"The Department of Water Resources is already mandated to develop Bulletin 118, which is the statewide update on groundwater basins. The report includes a thorough analysis of groundwater including a review of boundaries and hydrographic features, yield data, water budgets, well production characteristics, water quality, and development of a water budget for each groundwater basin. A more effective approach than this bill would be for the State to work with local districts and landowners to compile the existing data

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on extraction, recharge, and basin composition to get a complete analysis of what we know and do not know, then develop a plan to acquire the information necessary to fill the data gaps to enhance the existing mandate for Bulletin 118 and make that document even more useful."

ASSEMBLY FLOOR :

AYES: Baca, Bass, Berg, Bermudez, Calderon, Canciamilla, Chan, Chavez, Chu, Cohn, Coto, Daucher, De La Torre, Dymally, Emmerson, Evans, Frommer, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Jones, Karnette, Klehs, Koretz, La Suer, Laird, Leno, Levine, Lieber, Liu, Montanez, Mullin, Nation, Negrete McLeod, Oropeza, Pavley, Ridley-Thomas, Ruskin, Saldana, Spitzer, Torrico, Tran, Umberg, Vargas, Wolk, Yee, Nunez

NOES: Aghazarian, Arambula, Blakeslee, Bogh, Cogdill, DeVore, Garcia, Haynes, Houston, Huff, Keene, La Malfa, Leslie, Matthews, Maze, McCarthy, Mountjoy, Nakanishi, Niello, Parra, Plescia, Richman, Sharon Runner, Strickland, Villines, Walters, Wyland

NO VOTE RECORDED: Benoit, Nava, Salinas, Vacancy

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Sheila Kuehl, Chair  
2005-2006 Regular Session

BILL NO: SB 1640  
AUTHOR: Kuehl  
AMENDED: April 19, 2006  
FISCAL: Yes HEARING DATE: April 25, 2006  
URGENCY: No CONSULTANT: Dennis O'Connor  
SUBJECT: Water.

Summary: This bill would establish requirements for reporting the annual use of water under various water rights, establish consequences for failing to file the required reports, add additional requirements on various water resources planning processes, and require monitoring of groundwater levels in defined groundwater basins.

## Existing Law:

SWP Reliability Report. On May 5, 2003, the Planning and Conservation League et al. signed a settlement agreement with the Department of Water Resources (DWR) et al. to resolve a lawsuit concerning the "Monterey Agreement." Among other provisions, this settlement agreement requires DWR to produce a biennial State Water Project (SWP) reliability report.

Surface Water Reporting. Existing law requires each person who diverts water after December 31, 1965 to file with the state board a statement of diversion and use before July 1 of the succeeding year, with certain exceptions. These exceptions include diversions covered by an application, or a permit or license to appropriate water on file with the SWRCB. The SWRCB separately requires permit and license holders to report annual use as a condition of the permit or license. These exceptions also include diversions reported by DWR in its hydrologic data bulletins or

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diversions included in the consumptive use data for the delta lowlands published by DWR in its hydrologic data bulletins. Also under existing law, it is a misdemeanor to make a willful misstatement regarding statements of diversion or use and any person who makes a material misstatement under these provisions may be civilly liable. Under existing law, statements filed pursuant to these provisions are for informational purposes only, and, except as noted above, neither the failure to file a statement nor any error in the information filed have any legal consequences.

California Water Plan. Under existing law, the California Water Plan is the plan for the orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state. Existing law requires the plan to include a discussion of specified topics, including:

Various strategies, including those relating to the development of new water storage facilities, water conservation, water recycling, desalination, conjunctive use, and water transfers that may be pursued in order to meet the future water needs of the state.

The potential for alternative water pricing policies to change current and projected uses.

Urban Water Management Plans. Under existing law, every urban water supplier is required to prepare and adopt an urban water management plan, as prescribed, including a requirement that the urban water supplier coordinate the preparation of the plan with other appropriate agencies, to the extent practicable. Existing law also requires an urban water supplier to submit a copy of its plan to the

department, the California State Library, and any city or county within which the supplier provides water supplies, and to make the plan available for public review during normal business hours.

Under existing law, if an urban water supplier fails to prepare, adopt, and submit an urban water management plan, it is ineligible for certain bond funds and drought assistance until it does so. Existing law, until January 1, 2006, also requires the department to take into

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consideration whether a plan has been submitted in determining eligibility for other program funds.

Groundwater Management Plans. Under existing law, a local agency whose service area includes a groundwater basin that is not subject to groundwater management may adopt and implement a groundwater management plan pursuant to certain provisions of law.

Agricultural Water Management Plans. Until January 1, 1993, and thereafter only as specified, existing law provides for the preparation and adoption of water management plans. That existing law defines "agricultural water supplier" or "supplier" to mean a supplier, either publicly or privately owned, supplying more than 50,000 acre-feet of water annually for agricultural purposes.

DWR Groundwater Management Report. Under existing law, DWR was to conduct an investigation of the state's groundwater basins and report its findings to the Governor and Legislature by January 1, 1980. That report is commonly referred to as Bulletin 118. The Legislature has provided DWR funds to update Bulletin 118 on an irregular basis.

Proposed Law: This bill would do the following:

SWP Reliability Report. This bill would establish in statute the requirement that DWR produce a biennial SWP reliability report. The statute would parallel the language used in the Monterey Agreement settlement agreement.

Surface Water Reporting. This bill would establish consequences for failing to file statements of annual diversion or use for any diversion or use that occurs on or after January 1, 2006, as follows:

Expands the current civil liability provision that applies to willful material misstatements regarding annual diversion or use to apply to any person who fails to file a statement for a diversion or use.

Makes any person who fails to file a statement for a diversion or use ineligible for funds made available pursuant to any program administered by the state board,

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the department, or the California Bay-Delta Authority.

In any proceeding before the SWRCB in which it is alleged that an appropriative right has ceased because water has not been put to beneficial use, any use that is required to be included in a statement of annual use that has not been reported shall be deemed not to have occurred.

This bill would also delete obsolete exceptions to filing statements of annual diversion or use for diversions reported by DWR in its hydrologic data bulletins or included in the consumptive use data for the delta lowlands published by DWR in its hydrologic data bulletins.

California Water Plan. This bill would require the plan to include a discussion of the amount of energy both produced by and required by each water management strategy during peak and nonpeak use. The bill would require the plan to include estimates of the amount of energy produced by, as well as required to provide, current and projected water

supplies.

Urban Water Management Plans. This bill would require the following:

In addition to agencies already identified under current law, urban water agencies are to coordinate the preparation of the plan with public utilities that provide electric or gas service.

The plan is to quantify the amount of energy both produced by and required by existing and planned water sources.

The cost-benefit analysis for water demand management measures is to include the energy costs and benefits of conserved water during periods of peak and nonpeak use.

The urban water supplier is to submit a copy of its plan to additional entities, as appropriate, including groundwater management entities, agricultural water suppliers, city and county libraries, and county LAFCOs.

The urban water supplier must also make the plan available for public review on its Internet Web site.

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The bill would make more explicit the public process for preparing and adopting urban water management plans. This bill would make an urban water supplier that fails to prepare, adopt, and submit an urban water management plan ineligible for funds made available pursuant to any program administered by the state board, the department, or the California Bay-Delta Authority, until it does so.

Groundwater Management Plans. This bill, except as specified, would require a local agency to update the plan on or before December 31, 2008, and every 5 years thereafter. The bill would require a local agency to submit a copy of its plan to additional entities as appropriate, including cities and counties, urban water suppliers, agricultural water suppliers, city and county libraries, and county LAFCOs.

Agricultural Water Management Plans. This bill would substantially revise existing law relating to agricultural water management planning to require every agricultural water supplier to prepare and adopt an agricultural water management plan, as prescribed, on or before December 31, 2010. The bill would do all of the following:

Define "agricultural water supplier" or "supplier" to mean a supplier, either publicly or privately owned, supplying more than 2,000 acre-feet of water annually for agricultural purposes or serving more than 2,000 acres of agricultural land.

Require an agricultural water supplier to update the plan, file it, and make it available, as prescribed. The requirements for developing agricultural water management plans largely parallel the requirements for developing urban water management plans.

Make ineligible for funds made available pursuant to any program administered by the state board, the department, or the California Bay-Delta Authority, any agricultural water supplier that fails to prepare, adopt, and submit a plan.

Require the agricultural water supplier to submit a copy of its plan to additional entities as appropriate, including cities and counties, urban water suppliers, agricultural water suppliers, groundwater management entities, city and county libraries, and county LAFCOs.

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Groundwater Monitoring. This bill would establish a groundwater monitoring program to monitor "depth to groundwater" in defined basins and subbasins. The bill establishes procedures for local entities to be designated by DWR as groundwater monitoring entities. The bill would require DWR to work cooperatively with each monitoring

entity to reach an agreement with regard to the manner in which the monitoring entity will perform its monitoring functions. The bill would require the monitoring entity to submit reports to DWR on the results of the monitoring. The bill would require DWR to establish groundwater monitoring districts for those portions of a basin or a subbasin for which no monitoring entity has agreed to perform monitoring functions.

DWR Groundwater Management Report. This bill would require DWR to update Bulletin 118 not later than January 1, 2010, and thereafter in years ending in 5 or 0.

Arguments in Support: According to the Author, "There have always been significant gaps in our understanding of the ways in which people use water, how they manage water, and how they plan to meet the needs of California's growing population. The economy and well-being of our state depends on an affordable and reliable supply of water, and if we hope are to accommodate growth, preserve agriculture, and protect and restore our natural resources, we need to:

1. Improve the reporting of they ways in which water rights holders are using their rights. This would allow local groundwater agencies and other local water managers to manage their resources more effectively.
2. Make our process for water resources planning more open to those who wish to participate in the planning, as well as to those who want to know what the plan is."

"Last year, I introduced SB 820 to help fill the critical information gaps that currently hinder effective water resources planning. The bill would have reinforced existing water rights reporting requirements, promoted local management of groundwater basins, made urban water management planning more open and transparent, reinstated agricultural water management planning, and ensured that

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this information would be made widely available to all who need it."

"Unfortunately, Governor Schwarzenegger vetoed SB 820. In his veto statement, the Governor wrote:"

'This bill is a very comprehensive measure that attempts to address a host of water rights issues, including surface and groundwater, in one bill. While the author should be recognized for the effort on urban water management plans, energy consumption associated with water use, and surface water diversion reports, the bill is flawed by only reviewing half the groundwater equation. By mandating extraction reports without analysis of recharge, groundwater quality, basin composition, and other issues essential to understanding the health of the groundwater basin, this bill creates a significant burden on property owners that will not provide the information necessary to lead to sustainable decision making.'

"SB 1640 is identical to the final version of SB 820, with one important exception. Instead of including the groundwater reporting requirements that the Governor found objectionable, SB 1640 takes a different approach. It establishes a groundwater monitoring program that is consistent with the following goals:

That all groundwater basins and subbasins be locally managed pursuant to a locally developed groundwater management plan that was developed in an open public process and that the groundwater management plan be made freely and widely available.

That all groundwater basins and subbasins be regularly and systematically monitored for depth to groundwater and that the groundwater data be made freely and widely available.

That, for those groundwater basins and subbasins not being locally managed, voluntary cooperative groundwater monitoring associations be allowed to form to regularly and systematically monitor depth to groundwater and that the groundwater data be made freely and widely available.

That, for those groundwater basins and subbasins not being locally managed and that are not monitored by

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cooperative groundwater monitoring associations, the Department of Water Resources be required to regularly and systematically monitor depth to groundwater and to assess a fee to well owners within the department monitored area to recover the costs directly related to the monitoring."

Arguments in Opposition: None

Comments:

Groundwater Language Is A Work In Progress. The amendments of 4/19/06 created a new part in the water code. While the author has consulted with many interested parties about the concepts embodied in those amendments, the precise language, which reflects these concepts, is still under review. The author has committed to work with all interested parties to refine the language and to attempt to resolve any outstanding concerns.

Suggested Amendments: None

SUPPORT:

Cucamonga Valley Water District  
East Bay Municipal Utility District  
Long Beach Water Department  
Metropolitan Water District of Southern California  
Mono Lake Committee  
Sierra Club California

OPPOSITION:

None received



Senate Appropriations Committee Fiscal Summary  
 Senator Kevin Murray, Chairman

1640 (Kuehl)

Hearing Date: 5/25/06 Amended: 4/19/06  
 Consultant: John Decker Policy Vote: NR & W 6-0

BILL SUMMARY: SB 1640 would require: (a) monitoring groundwater levels in certain basins, (b) specifying changes to the water-resources planning process, (c) imposing penalties for failing to file required water reports, and (d) making reports regarding water use.

Fiscal Impact (in thousands)

Major Provisions	2006-07	2007-08	2008-09	Fund
Use of water for energy purposes	\$400			Special"

\*Various funds within the Department of Water Resources

STAFF COMMENTS: Suspense File.

The bill makes several changes to state water issues:

1. Monitoring Groundwater Levels . The bill authorizes the Department of Water Resources (DWR) to designate a local water agency as a groundwater monitoring entity. Once DWR makes the designation, the bill requires the department to work with the agency on its monitoring. The agency will report to DWR on the monitoring results.

The bill also requires DWR to update its Groundwater Management Report on or before January 1, 2010 and every five years thereafter. The report, also known as Bulletin 118, was last updated for 2003.

Under the bill, local agencies must update their groundwater management plans on or before December 31, 2008 and every five years thereafter. The cost to comply with these requirements are not state reimbursable.

2. Add Requirements to the Water-Resources Planning

Process . Under current law, urban water suppliers must adopt an urban water management plan. If the supplier fails to adopt the plan, it is ineligible for bond funds and drought assistance. SB 1640 expands the plan requirements to include (a) a quantification of the energy used and produced by the supplier's sources, and (b) a cost/benefit analysis for water demand management measures.

Current law also requires agricultural water districts to adopt water management plans. The bill requires these districts to update their plans on or before December 31, 2010. If a district fails to file a required report, it will be ineligible for state funding.

-- continued --

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 SB 1640 (Kuehl)

3. Impose Penalties for Failing To File Reports on Diversion . Current law requires that each person diverting water to file an annual statement about the diversion and its use. This bill expands the current civil liability provision for those circumstances where a person willfully makes material misstatements. The bill also makes any person failing to file the diversion statement ineligible for state funds. To the extent it makes persons ineligible for state funds, the bill could reduce the demand for state assistance. However, because assistance is generally oversubscribed, there are not likely to be savings associated with these provisions.

4. Impose Report Requirements on DWR . The bill requires DWR to file a biennial report on the reliability of the State Water Project. This report is already required under a settlement with the Planning and Conservation League, so

the statutory provisions would add no new state costs.

Under the bill, DWR must file a plan discussing the amount of energy used and produced during peak and nonpeak water use. The cost to complete this study is likely to be in excess of \$400,000.

SENATE RULES COMMITTEE	SB 1640
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
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327-4478	

## THIRD READING

Bill No: SB 1640  
 Author: Kuehl (D)  
 Amended: 4/19/06  
 Vote: 21

SENATE NATURAL RES. & WATER COMMITTEE : 6-0, 4/25/06  
 AYES: Kuehl, Margett, Kehoe, Lowenthal, Machado, Migden  
 NO VOTE RECORDED: Aanestad

SENATE APPROPRIATIONS COMMITTEE : 8-5, 5/25/06  
 AYES: Murray, Alarcon, Alquist, Escutia, Florez, Ortiz,  
 Romero, Torlakson  
 NOES: Aanestad, Ashburn, Battin, Dutton, Poochigian

SUBJECT : Water

SOURCE : Author

DIGEST : This bill establishes requirements for reporting the annual use of water under various water rights, establishes consequences for failing to file the required reports, adds additional requirements on various water resources planning processes, and requires monitoring of groundwater levels in defined groundwater basins.

ANALYSIS :

Existing law:

State Water Project (SWP) Reliability Report . On May 5,  
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2003, the Planning and Conservation League, et al, signed a settlement agreement with the Department of Water Resources (DWR), et al, to resolve a lawsuit concerning the "Monterey Agreement." Among other provisions, this settlement agreement requires DWR to produce a biennial SWP reliability report.

Surface Water Reporting . Requires each person who diverts water after December 31, 1965, to file with the state board a statement of diversion and use before July 1 of the succeeding year, with certain exceptions. These exceptions include diversions covered by an application, or a permit or license to appropriate water on file with the State Water Resources Control Board (SWRCB). The SWRCB separately requires permit and license holders to report annual use as a condition of the permit or license. These exceptions also include diversions reported by DWR in its hydrologic data bulletins or diversions included in the consumptive use data for the delta lowlands published by DWR in its hydrologic data bulletins. Also, it is a misdemeanor to make a willful misstatement regarding statements of diversion or use and any person who makes a material misstatement under these provisions may be civilly liable. Statements filed pursuant to these provisions are for informational purposes only, and, except as noted above, neither the failure to file a statement nor any error in the information filed have any legal consequences.

California Water Plan . The California Water Plan is the plan for the orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state. Requires the plan to include a

discussion of specified topics, including (1) various strategies, including those relating to the development of new water storage facilities, water conservation, water recycling, desalination, conjunctive use, and water transfers that may be pursued in order to meet the future water needs of the state, and (2) the potential for alternative water pricing policies to change current and projected uses.

Urban Water Management Plans . Every urban water supplier is required to prepare and adopt an urban water management plan, as prescribed, including a requirement that the urban

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water supplier coordinate the preparation of the plan with other appropriate agencies, to the extent practicable. Also requires an urban water supplier to submit a copy of its plan to the department, the California State Library, and any city or county within which the supplier provides water supplies, and to make the plan available for public review during normal business hours.

If an urban water supplier fails to prepare, adopt, and submit an urban water management plan, it is ineligible for certain bond funds and drought assistance until it does so.

Until January 1, 2006, also requires the department to take into consideration whether a plan has been submitted in determining eligibility for other program funds.

Groundwater Management Plans . A local agency whose service area includes a groundwater basin that is not subject to groundwater management may adopt and implement a groundwater management plan pursuant to certain provisions of law.

Agricultural Water Management Plans . Until January 1, 1993, and thereafter only as specified, provides for the preparation and adoption of water management plans. Defines "agricultural water supplier" or "supplier" to mean a supplier, either publicly or privately owned, supplying more than 50,000 acre-feet of water annually for agricultural purposes.

DWR Groundwater Management Report . DWR was to conduct an investigation of the state's groundwater basins and report its findings to the Governor and Legislature by January 1, 1980. That report is commonly referred to as Bulletin 118. The Legislature has provided DWR funds to update Bulletin 118 on an irregular basis.

This bill:

SWP Reliability Report . Establishes in statute the requirement that DWR produce a biennial SWP reliability report. The statute parallels the language used in the Monterey Agreement settlement agreement.

Surface Water Reporting . Establishes consequences for

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failing to file statements of annual diversion or use for any diversion or use that occurs on or after January 1, 2006, as follows:

1. Expands the current civil liability provision that applies to willful material misstatements regarding annual diversion or use to apply to any person who fails to file a statement for a diversion or use.
2. Makes any person who fails to file a statement for a diversion or use ineligible for funds made available pursuant to any program administered by the state board, the department, or the California Bay-Delta Authority.
3. In any proceeding before the SWRCB in which it is alleged that an appropriative right has ceased because water has not been put to beneficial use, any use that

is required to be included in a statement of annual use that has not been reported shall be deemed not to have occurred.

This bill deletes obsolete exceptions to filing statements of annual diversion or use for diversions reported by DWR in its hydrologic data bulletins or included in the consumptive use data for the delta lowlands published by DWR in its hydrologic data bulletins.

California Water Plan . Requires the plan to include a discussion of the amount of energy both produced by and required by each water management strategy during peak and nonpeak use. Requires the plan to include estimates of the amount of energy produced by, as well as required to provide, current and projected water supplies.

Urban Water Management Plans . Requires the following:

1. In addition to agencies already identified under current law, urban water agencies are to coordinate the preparation of the plan with public utilities that provide electric or gas service.
2. The plan is to quantify the amount of energy both produced by and required by existing and planned water sources.

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3. The cost-benefit analysis for water demand management measures is to include the energy costs and benefits of conserved water during periods of peak and nonpeak use.
4. The urban water supplier is to submit a copy of its plan to additional entities, as appropriate, including groundwater management entities, agricultural water suppliers, city and county libraries, and county local agency formation commissions (LAFCOs).
5. The urban water supplier must also make the plan available for public review on its Internet web site.

This bill makes more explicit the public process for preparing and adopting urban water management plans. This bill makes an urban water supplier that fails to prepare, adopt, and submit an urban water management plan ineligible for funds made available pursuant to any program administered by the state board, the department, or the California Bay-Delta Authority, until it does so.

Groundwater Management Plans . Except as specified, requires a local agency to update the plan on or before December 31, 2008, and every five years thereafter. Requires a local agency to submit a copy of its plan to additional entities as appropriate, including cities and counties, urban water suppliers, agricultural water suppliers, city and county libraries, and county LAFCOs.

Agricultural Water Management Plans . Revises existing law relating to agricultural water management planning to require every agricultural water supplier to prepare and adopt an agricultural water management plan, as prescribed, on or before December 31, 2010. This bill:

1. Defines "agricultural water supplier" or "supplier" to mean a supplier, either publicly or privately owned, supplying more than 2,000 acre-feet of water annually for agricultural purposes or serving more than 2,000 acres of agricultural land.
2. Requires an agricultural water supplier to update the

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plan, file it, and make it available, as prescribed. The requirements for developing agricultural water

management plans largely parallel the requirements for developing urban water management plans.

3. Makes ineligible for funds made available pursuant to any program administered by the state board, the department, or the California Bay-Delta Authority, any agricultural water supplier that fails to prepare, adopt, and submit a plan.
4. Requires the agricultural water supplier to submit a copy of its plan to additional entities as appropriate, including cities and counties, urban water suppliers, agricultural water suppliers, groundwater management entities, city and county libraries, and county LAFCOs.

Groundwater Monitoring . Establishes a groundwater monitoring program to monitor "depth to groundwater" in defined basins and subbasins. Establishes procedures for local entities to be designated by DWR as groundwater monitoring entities. Requires DWR to work cooperatively with each monitoring entity to reach an agreement with regard to the manner in which the monitoring entity will perform its monitoring functions. Requires the monitoring entity to submit reports to DWR on the results of the monitoring. Requires DWR to establish groundwater monitoring districts for those portions of a basin or a subbasin for which no monitoring entity has agreed to perform monitoring functions.

DWR Groundwater Management Report . Requires DWR to update Bulletin 118 not later than January 1, 2010, and thereafter in years ending in 5 or 0.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: No

According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>Fund</u>	<u>2006-07</u>	<u>2007-08</u>
<u>2008-09</u>			

□

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Use of water for  
Special\*  
energy purposes

\$400

\* Various funds within DWR.

SUPPORT : (Verified 5/25/06)

Calleguas Municipal Water District  
Cucamonga Valley Water District  
East Bay Municipal Utility District  
Long Beach Water Department  
Metropolitan Water District of Southern California  
Mono Lake Committee  
Sierra Club California

ARGUMENTS IN SUPPORT : According to the author's office:

"There have always been significant gaps in our understanding of the ways in which people use water, how they manage water, and how they plan to meet the needs of California's growing population. The economy and well-being of our state depends on an affordable and reliable supply of water, and if we hope are to accommodate growth, preserve agriculture, and protect and restore our natural resources, we need to:

1. Improve the reporting of they ways in which water rights holders are using their rights. This would allow local groundwater agencies and other local water managers to manage their resources more effectively.
2. Make our process for water resources planning more open to those who wish to participate in the planning, as well as to those who want to know what the plan is."

SUPPORT/OPPOSITION: SEE ABOVE

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\*\*\*\* END \*\*\*\*



SENATE RULES COMMITTEE	SB 1640
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520	Fax: (916)
327-4478	

## THIRD READING

Bill No: SB 1640  
 Author: Kuehl (D)  
 Amended: 5/26/06  
 Vote: 21

SENATE NATURAL RES. & WATER COMMITTEE : 6-0, 4/25/06  
 AYES: Kuehl, Margett, Kehoe, Lowenthal, Machado, Migden  
 NO VOTE RECORDED: Aanestad

SENATE APPROPRIATIONS COMMITTEE : 8-5, 5/25/06  
 AYES: Murray, Alarcon, Alquist, Escutia, Florez, Ortiz,  
 Romero, Torlakson  
 NOES: Aanestad, Ashburn, Battin, Dutton, Poochigian

SUBJECT : Water

SOURCE : Author

DIGEST : This bill establishes requirements for reporting the annual use of water under various water rights, establishes consequences for failing to file the required reports, adds additional requirements on various water resources planning processes, and requires monitoring of groundwater levels in defined groundwater basins.

Senate Floor Amendments of 5/26/06 clarify details of how the groundwater monitoring program would operate.

ANALYSIS :

CONTINUED

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Existing law:

State Water Project (SWP) Reliability Report . On May 5, 2003, the Planning and Conservation League, et al, signed a settlement agreement with the Department of Water Resources (DWR), et al, to resolve a lawsuit concerning the "Monterey Agreement." Among other provisions, this settlement agreement requires DWR to produce a biennial SWP reliability report.

Surface Water Reporting . Requires each person who diverts water after December 31, 1965, to file with the State Water Resources Control Board (SWRCB) a statement of diversion and use before July 1 of the succeeding year, with certain exceptions. These exceptions include diversions covered by an application, or a permit or license to appropriate water on file with the SWRCB. The SWRCB separately requires permit and license holders to report annual use as a condition of the permit or license. These exceptions also include diversions reported by DWR in its hydrologic data bulletins or diversions included in the consumptive use data for the delta lowlands published by DWR in its hydrologic data bulletins. Also, it is a misdemeanor to make a willful misstatement regarding statements of diversion or use and any person who makes a material misstatement under these provisions may be civilly liable. Statements filed pursuant to these provisions are for informational purposes only, and, except as noted above, neither the failure to file a statement nor any error in the information filed have any legal consequences.

California Water Plan . The California Water Plan is the

plan for the orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state. Requires the plan to include a discussion of specified topics, including (1) various strategies, including those relating to the development of new water storage facilities, water conservation, water recycling, desalination, conjunctive use, and water transfers that may be pursued in order to meet the future water needs of the state, and (2) the potential for alternative water pricing policies to change current and projected uses.

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Urban Water Management Plans . Every urban water supplier is required to prepare and adopt an urban water management plan, as prescribed, including a requirement that the urban water supplier coordinate the preparation of the plan with other appropriate agencies, to the extent practicable. Also requires an urban water supplier to submit a copy of its plan to the department, the California State Library, and any city or county within which the supplier provides water supplies, and to make the plan available for public review during normal business hours.

If an urban water supplier fails to prepare, adopt, and submit an urban water management plan, it is ineligible for certain bond funds and drought assistance until it does so.

Until January 1, 2006, also requires the department to take into consideration whether a plan has been submitted in determining eligibility for other program funds.

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This bill:

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SWP Reliability Report . Establishes in statute the requirement that DWR produce a biennial SWP reliability report. The statute parallels the language used in the

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Monterey Agreement settlement agreement.

Surface Water Reporting . Establishes consequences for failing to file statements of annual diversion or use for any diversion or use that occurs on or after January 1, 2006, as follows:

1. Expands the current civil liability provision that applies to willful material misstatements regarding annual diversion or use to apply to any person who fails to file a statement for a diversion or use.
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3. In any proceeding before the SWRCB in which it is alleged that an appropriative right has ceased because water has not been put to beneficial use, any use that is required to be included in a statement of annual use that has not been reported shall be deemed not to have occurred.

This bill deletes obsolete exceptions to filing statements of annual diversion or use for diversions reported by DWR in its hydrologic data bulletins or included in the consumptive use data for the delta lowlands published by DWR in its hydrologic data bulletins.

California Water Plan . Requires the plan to include a discussion of the amount of energy both produced by and required by each water management strategy during peak and nonpeak use. Requires the plan to include estimates of the amount of energy produced by, as well as required to provide, current and projected water supplies.

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1. In addition to agencies already identified under current law, urban water agencies are to coordinate the preparation of the plan with public utilities that provide electric or gas service.

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2. The plan is to quantify the amount of energy both produced by and required by existing and planned water sources.
3. The cost-benefit analysis for water demand management measures is to include the energy costs and benefits of conserved water during periods of peak and nonpeak use.
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Agricultural Water Management Plans . Revises existing law relating to agricultural water management planning to require every agricultural water supplier to prepare and adopt an agricultural water management plan, as prescribed, on or before December 31, 2010. This bill:

1. Defines "agricultural water supplier" or "supplier" to mean a supplier, either publicly or privately owned, supplying more than 2,000 acre-feet of water annually for agricultural purposes or serving more than 2,000

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acres of agricultural land.

2. Requires an agricultural water supplier to update the plan, file it, and make it available, as prescribed. The requirements for developing agricultural water management plans largely parallel the requirements for developing urban water management plans.
3. Makes ineligible for funds made available pursuant to any program administered by the state board, the department, or the California Bay-Delta Authority, any agricultural water supplier that fails to prepare, adopt, and submit a plan.
4. Requires the agricultural water supplier to submit a copy of its plan to additional entities as appropriate, including cities and counties, urban water suppliers, agricultural water suppliers, groundwater management entities, city and county libraries, and county LAFCOs.

Groundwater Monitoring . Establishes a groundwater monitoring program to monitor and report with regard to groundwater elevations in all or part of basins and subbasins, as defined. Establishes procedures for local entities to be designated by DWR as groundwater monitoring entities. Requires DWR to work cooperatively with each monitoring entity to reach an agreement with regard to the manner in which the monitoring entity will perform its monitoring and reporting functions. Authorizes DWR to recommend improvements to a monitoring program and require additional monitoring wells under certain circumstances. Requires DWR to establish groundwater monitoring districts for those portions of a basin or a subbasin for which no monitoring entity has agreed to perform monitoring functions.

DWR Groundwater Management Report . Requires DWR to update Bulletin 118 not later than January 1, 2010, and thereafter in years ending in 5 or 0.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: No

According to the Senate Appropriations Committee:

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Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>2006-07</u>	<u>2007-08</u>
<u>2008-09</u>	<u>Fund</u>	
Use of water for Special* energy purposes		\$400

\* Various funds within DWR.

SUPPORT : (Verified 5/25/06)

Calleguas Municipal Water District  
Cucamonga Valley Water District  
East Bay Municipal Utility District  
Long Beach Water Department  
Metropolitan Water District of Southern California  
Mono Lake Committee  
Sierra Club California

ARGUMENTS IN SUPPORT : According to the author's office:

"There have always been significant gaps in our understanding of the ways in which people use water, how they manage water, and how they plan to meet the needs of California's growing population. The economy and well-being of our state depends on an affordable and reliable supply of water, and if we hope are to accommodate growth, preserve agriculture, and protect and restore our natural resources, we need to:

1. Improve the reporting of the ways in which water rights holders are using their rights. This would allow local groundwater agencies and other local water managers to manage their resources more effectively.
2. Make our process for water resources planning more open to those who wish to participate in the

planning, as well as to those who want to know what  
the plan is."

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CTW/AGB:mel 5/27/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

Date of Hearing: June 27, 2006

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE  
Lois Wolk, Chair  
SB 1640 (Kuehl) - As Amended: June 22, 2006

SENATE VOTE : 21-16

SUBJECT : Groundwater reporting

SUMMARY : Amends disclosure requirements for certain information as to water use and planning. Specifically, this bill :

- 1) Codifies certain settlement provision arising out of 1994 "Monterey Agreement" litigation requiring the Department of Water Resources (DWR) to estimate then-existing overall State Water Project (SWP) delivery capability under a range of hydrologic conditions, and deliver such estimates to various local agencies.
- 2) Establishes consequences for failing to file statements of annual diversion or use for any surface water diversion or use occurring on or after January 1, 2007:
  - a) Bars those who fail to file required statements from receiving state funds from any program administered by SWRCB, DWR, or the Bay-Delta Authority; and,
  - b) Extends existing liability for civil fines to failure to file required reports, while requiring the board to consider specified factors for limiting the penalty
- 3) Adds requirements for already-required urban water management plans and State Water Plan to include energy production information and provide certain notice and public process.
- 4) Requires agricultural water suppliers to prepare agricultural water management plans:
  - a) Requires DWR to study the threshold for requiring such plans and expresses legislative intent to adopt a threshold;
  - b) Requires analysis of agency's water supplies and uses,

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including evaluation of reasonable, practical, and cost-effective water conservation activities. States legislative intent that planning efforts be "commensurate with the numbers of customers served and the volume of water supplied;"

- c) Requires distribution of such plans to certain state and local agencies and libraries, and posting on either the agency's or DWR's Web site;
  - d) Requires DWR to analyze such plans and report, every five years, to the Legislature regarding the status of such plans and their effect on promoting efficient agricultural water management practices; and
  - e) Denies State funding to agricultural water suppliers that fail to prepare required reports.
- 5) Requires DWR to report on the status of agricultural water management plans.
- 6) Establishes a statewide groundwater monitoring program by incorporating existing groundwater management programs and agencies into one comprehensive scheme, with oversight by DWR.
- a) Expresses legislative intent to rely on local agencies for groundwater monitoring.
  - b) Identifies and prioritizes categories of local agencies that may volunteer to monitor and report groundwater elevations, including

- i) court-appointed watermasters or water management engineers;
  - ii) groundwater management agencies;
  - iii) other local agencies or counties managing all or a part of groundwater basin;
  - iv) integrated regional water management agency
  - v) voluntary groundwater monitoring association, as defined
- c) Requires volunteer agencies to submit certain information, including the agency's qualifications to monitor groundwater, to DWR, which will assess each

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volunteer's qualifications.

- d) Requires DWR to determine the appropriate agency to monitor groundwater, through either cooperation with the volunteer agencies or, where competing agencies cannot agree, application of the priorities above.
- e) Requires DWR to negotiate an agreement with each monitoring agency regarding the reporting protocols, but with deference to existing programs that offer information showing seasonal and long-term trends in groundwater elevations.
- f) Requires monitoring agencies to report groundwater elevations starting on 1/1/09.
- g) Requires DWR to determine the portions of basins with no monitoring and contact well owners in the area to encourage development of a groundwater management/monitoring or integrated regional water management.
- h) Requires DWR to establish a groundwater monitoring district for those areas where neither local well owners nor the affected county agree to monitor groundwater, including authority to charge well owners for monitoring costs.
- i) Authorizes creation of voluntary cooperative groundwater monitoring associations.
- j) Requires updating of DWR groundwater investigation, commonly called "Bulletin 118," in years ending in 00 and 05.

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EXISTING LAW

- 1) Requires filing of surface water use statements with SWRCB subject to certain exceptions, including:
- 2) Imposes misdemeanor and civil penalties for material misstatements in water use statements.
- 3) Requires urban water suppliers with more than 3,000 customers or selling more than 3,000 acre-feet to develop an urban water management plan.
- 4) Authorizes development of voluntary "AB 3030 plans" for groundwater management, under certain conditions.



5) Formerly required agricultural water suppliers that supply more than 50,000 acre-feet of water annually for agricultural purposes to develop agricultural water management plans by 1992, but that law expired on January 1, 1993.

6) Requires filing of annual groundwater extraction report by groundwater users in four Southern California counties (Riverside, San Bernardino, Los Angeles, and Ventura).

FISCAL EFFECT : Senate Appropriations Committee estimated a \$400,000 one-time cost for the study of the use of energy related to water. The remaining costs are not reimbursable by the State, either because they may be recovered by local fees or other reasons.

COMMENTS : Much of SB 1640 comes verbatim from last year's SB 820 (Kuehl), which the Governor vetoed. The author retained the less controversial provisions of her bill, related to SWP reliability, surface water reporting, urban and agricultural water management plans, and energy/water conservation. These provisions had been negotiated by many parties and, by the time SB 820 went to the Governor, the bill's opposition from water agencies had gone to neutral or support.

The Governor's veto message noted that SB 820 did not require collection of sufficient information for the State to assess trends in groundwater elevations. Therefore, this year, the author has pursued a new direction for groundwater reporting, relying on volunteer local agencies to monitor groundwater elevations, not individual groundwater extractions.

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Groundwater Monitoring: In the last decade, California has improved management of its groundwater resources, particularly in the Central Valley, due mostly to "AB 3030 plans" authorized by AB 3030 (1992). SB 1640 takes another step in improving that management capability, by expanding the information available to state and local agencies beyond water districts. Such reports and plans allow the broader community, including city and county governments, to learn more about the conditions of the state's valuable and limited water resources, which are owned by the people. (Overlying property owners have only the right to use the water underlying their lands, subject to the limitation of "reasonable use.")

While this year's bill fosters voluntary reporting, it also requires DWR to take a leading role in ensuring that all the groundwater basins are being monitored. Initially, DWR tracks which basins have one or more volunteer monitoring agencies. If a basin has no monitoring agency, then DWR works with local agencies to identify an agency. If there is no local interest, then DWR may establish a monitoring district, which will monitor groundwater elevations and charge local groundwater users for the costs of such monitoring. This bill does not require reports of individual pumping, which caused controversy and continuing Farm Bureau opposition last year.

Author's intent: SB 1640 intends to expand the base of information as to California's groundwater use and use of water for agriculture generally, in order to improve the state's ability to plan for continued future growth and development. More than nine million Californians rely on groundwater as their sole source of supply. California is one of only two states without any comprehensive, statewide groundwater monitoring or regulation (i.e. Texas and California). This bill does not impose any regulation or change groundwater rights law, but improves public access to information about California's groundwater and agricultural water resources.

Surface water diversion reports: Existing law requires reporting of all water diversions to SWRCB, except for certain diversions that are reported by other means, and imposes criminal and civil fines for willful misstatements. This bill now only extends existing penalties for the failure to file such required reports, including the civil/administrative fines and ineligibility for funding from State water programs.

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SB 1640

Urban water management plans/energy: This bill does not substantially change requirements for urban water management plans, but merely adds the element of energy production and use arising out of water supply plans to the analysis for such urban plans. It also clarifies the notice and public process for considering adoption of such plans.

Agricultural water management plans: This bill expands the state's efforts to plan for the future of its water resources, by requiring agricultural water management plans for "agricultural water suppliers." This water management plan concept originated in 1983 legislation (for urban plans), followed by 1986 legislation requiring agricultural water management plans, which expired in 1993. In 1992, Congress required water conservation plans from districts drawing more than 2,000 acre-feet from the Central Valley Project, although smaller districts ultimately received funding to complete those plans.

The agricultural water management plans proposed in this bill include analysis of cost-effective water conservation projects to improve water supply reliability, as well as other information that provides a baseline of information as to the State's water resources used for agriculture. The bill also requires submission to, and review by, DWR, which is required to report to the Legislature as to the status of these plans, in general, and the results of these requirements. The previous dispute over the threshold for requiring such plans (i.e. 10,000 acre-feet vs. 50,000 acre-feet) has been resolved by requiring DWR to study and assess the appropriate threshold.

Agricultural Community Opposition: Several organizations from the agricultural community have expressed continued opposition to the bill, primarily based on the bill's state mandate of groundwater elevation monitoring. They particularly object to the bill's authorization for DWR may create a monitoring district, if no local agency volunteers and the community refuses to monitor groundwater. In their view, "California should fund its own groundwater monitoring network before imposing local obligations." They also expressed concerns about:

1) costs/overhead for State collection of data; 2) the State's "data monopoly;" 3) conflicts between groundwater appropriators and overlying landowners; 4) lack of need for information on

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isolated basins; 5) lack of an exemption for court-appointed watermasters; and 6) State interference in exercise of property rights.

When informed of this continued opposition, the author's office acknowledged that "there are still important, outstanding details that need to be resolved. The author commits to continuing to work with all interested parties to address these outstanding details." The Committee therefore may hear additional discussion of these issues at the hearing.

REGISTERED SUPPORT / OPPOSITION :

Support

Calleguas Municipal Water District  
Groundwater Resources Association  
Metropolitan Water District of So. Calif.  
Mono Lake Committee  
Natural Resources Defense Council  
Planning and Conservation League  
San Diego County Water Authority

Opposition (unless amended)

Agricultural Council of CA.  
CA Assoc. of Winegrape Growers  
CA Farm Bureau Federation  
Friant Water Authority  
Regional Council of Rural Counties  
Salinas Valley Water Coalition  
Wine Institute

Opposition :

Western Growers Association

Analysis Prepared by : Alf W. Brandt / W., P. & W. / (916)  
319-2096

Date of Hearing: August 9, 2006

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
 Judy Chu, Chair

SB 1640 (Kuehl) - As Amended: August 7, 2006

Policy Committee: Water, Parks &  
 Wildlife Vote: 7-4

Urgency: No State Mandated Local Program:  
 No Reimbursable:

SUMMARY

This bill expands and enhances the processes by which the Department of Water Resources (DWR) and the State Water Resources Control Board (SWRCB) collect and compile data related to the supply of surface water and groundwater to determine the status of existing water supplies and to project future water supply needs.

FISCAL EFFECT

Moderate GF costs, about \$350,000 starting in 2013-14 and periodically thereafter, to DWR to include energy-related information in the California Water Plan (CWP).

SUMMARY CONTINUED

Specifically, this bill:

- 1) Establishes penalties for failing to file statements of annual diversion or use for any surface water diversion or use by barring those who fail to file from receiving state funds under any program administered by DWR, the SWRCB, or the Bay-Delta Authority and by extending existing civil fines to those who fail to file required statements.
- 2) Requires urban water management plans and the CWP to include energy production information and to establish a public notice process.
- 3) Codifies provisions of the 1004 "Monterey Agreement" that requires DWR to estimate overall State Water Project (SWP)

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delivery capability under a range of hydrologic conditions, and to deliver the estimates to local agencies.

- 4) Reinstates and updates the requirement that an agricultural water supplier prepare an Agricultural Water Management Plan (AWMP), modifies the circumstances under which an AWMP must be prepared, requires an adopted AWMP to be delivered to more entities and be made available on an appropriate website, and requires the AWMP to be updated every five years.
- 5) Reinstates the requirement that DWR investigate the status of the state's groundwater basins, and requires an initial report by January 1, 2010 and an update every five years.

COMMENTS

1)Rationale . The author contends that DWR, SWRCB, and other state and local agencies that regulate water supply and water use do not currently have enough data regarding water supply and water use to effectively determine current status and to project long-term water supply and water use needs. Because groundwater extractions only have to be reported in four counties and because most groundwater basins are not managed to ensure adequate supply and beneficial use, there is little information to help ensure the long-term well-being and availability of groundwater supplies in California. The author believes SB 1640 expands the base of information on California's groundwater use. California is one of only two states without a comprehensive, statewide groundwater regulatory system.

2)Prior Legislation . This bill is similar to SB 820 (Kuehl), a measure vetoed by the governor last year. The author has deleted some of the more controversial provisions contained in SB 820 and has modified other provisions in an effort to secure the governor's signature on SB 1640.

Analysis Prepared by : Steve Archibald / APPR. / (916)  
319-2081

SENATE THIRD READING  
 SB 1640 (Kuehl)  
 As Amended August 7, 2006  
 Majority vote

SENATE VOTE :25-13

WATER, PARKS & WILDLIFE 7-4  
APPROPRIATIONS 13-5

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Ayes: Wolk, Bass, Berg, Bermudez, Lieu, Pavley, Salda?a	Ayes: Chu, Bass, Berg, Calderon, De La Torre, Karnette, Klehs, Laird, Leno, Nation, Ridley-Thomas, Salda?a, Yee
Nays: Villines, Matthews, Maze, Parra	Nays: Sharon Runner, Emmerson, Haynes, Nakanishi, Walters

SUMMARY : Amends disclosure requirements for certain information as to water use and planning. Specifically, this bill :

- 1) Codifies certain settlement provision arising out of 1994 "Monterey Agreement" litigation requiring the Department of Water Resources (DWR) relating to estimation of State Water Project (SWP) delivery capability.
- 2) Establishes consequences for failing to file statements of annual diversion or use for any surface water diversion or use occurring on or after January 1, 2007:
  - a) Bars those who fail to file required statements from receiving state funds from any program administered by the State Water Resources Control Board (SWRCB), DWR, or the California Bay-Delta Authority; and,
  - b) Extends existing liability for civil fines to failure to file required reports, while requiring the board to consider specified factors for limiting the penalty.

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- 3) Adds requirements for already-required urban water management plans and State Water Plan to include energy production information and provide certain notice and public process.
- 4) Requires agricultural water suppliers to prepare agricultural water management plans:
  - a) Requires DWR to study the threshold for requiring such plans and expresses legislative intent to adopt a threshold;
  - b) Requires analysis of agency's water supplies and uses, including evaluation of reasonable, practical, and cost-effective water conservation activities;
  - c) Requires distribution of such plans to certain state and local agencies and libraries, and posting on either the agency's or DWR's Web site;
  - d) Requires DWR to analyze such plans and report to the Legislature regarding the status of such plans and their effect on promoting agricultural water use efficiency;
  - e) Denies state funding to agricultural water suppliers that fail to prepare required reports; and,
  - f) Requires DWR to report on the status of agricultural water management plans.
- 5) Establishes a statewide groundwater monitoring program by

incorporating existing groundwater management programs and agencies into one comprehensive scheme, with oversight by DWR.

- a) Expresses legislative intent to rely on local agencies for groundwater monitoring, while maintaining existing DWR network of monitoring wells;
- b) Identifies and prioritizes categories of local agencies that may volunteer to monitor and report groundwater elevations, including:
  - i) court-appointed watermasters or water management

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- engineers;
  - ii) groundwater management agencies;
  - iii) other local agencies or counties managing all or a part of groundwater basin;
  - iv) integrated regional water management agency; and,
  - v) voluntary groundwater monitoring association, as defined.
- c) Requires volunteer agencies to submit certain information, including the agency's qualifications to monitor groundwater, to DWR for:
- i) evaluation of volunteer qualifications;
  - ii) determination of the appropriate agency to monitor groundwater, either cooperatively or by application of the priorities above; and,
  - iii) development of monitoring and reporting protocols, deferring to existing programs.
- d) Requires monitoring agencies to report groundwater elevations starting on January 1, 2009;
- e) Requires DWR to determine the portions of basins with no monitoring and contact well owners in the area to encourage development of a groundwater management/monitoring or integrated regional water management;
- f) Requires DWR to establish a groundwater monitoring district for those areas where neither local well owners nor the affected county agree to monitor groundwater, including authority to charge well owners for monitoring costs;
- g) Authorizes creation of voluntary cooperative groundwater monitoring associations; and,
- h) Requires updating of DWR groundwater investigation, commonly called "Bulletin 118," in years ending in 00 and 05.

EXISTING LAW :

- 1) Requires filing of surface water use statements with SWRCB subject to certain exceptions.

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- 2) Imposes misdemeanor and civil penalties for material misstatements in water use statements.
- 3) Requires urban water suppliers with more than 3,000 customers or selling more than 3,000 acre-feet to develop an urban water management plan.
- 4) Authorizes development of voluntary "AB 3030 plans" for groundwater management, under certain conditions.
- 5) Formerly required agricultural water suppliers that supply more than 50,000 acre-feet of water annually for agricultural purposes to develop agricultural water management plans by



1992, but that law expired on January 1, 1993.

- 6) Requires filing of annual groundwater extraction report by groundwater users in four Southern California counties (Riverside, San Bernardino, Los Angeles, and Ventura).

FISCAL EFFECT : Assembly Appropriations Committee estimated \$750,000 in recurring costs, beginning in 2013-14 for the study of the use of energy related to water. Remaining costs are not reimbursable by the state, either because they may be recovered by local fees or other reasons.

COMMENTS : Much of this bill comes verbatim from last year's SB 820 (Kuehl), which the Governor vetoed. The author retained the less controversial provisions of her bill, related to SWP reliability, surface water reporting, urban and agricultural water management plans, and energy/water conservation. These provisions had been negotiated by many parties and, by the time SB 820 went to the Governor, the bill's opposition from water agencies had gone to neutral or support.

The Governor's veto message noted that SB 820 did not require collection of sufficient information for the state to assess trends in groundwater elevations. Therefore, this year, the author has pursued a new direction for groundwater reporting, relying on volunteer local agencies to monitor groundwater elevations, and not individual groundwater extractions.

Groundwater Monitoring: This bill takes another step in improving groundwater management capability, by expanding the

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information available to state and local agencies beyond water districts. Such reports and plans allow the broader community, including city and county governments, to learn more about the conditions of the state's valuable and limited water resources, which are owned by the people. (Overlying property owners have only the right to use the water underlying their lands, subject to the limitation of "reasonable use.")

While this year's bill fosters voluntary reporting, it also requires DWR to take a leading role in ensuring that all the groundwater basins are being monitored. DWR will work cooperatively in identifying the appropriate volunteer monitoring agency and setting reporting protocols. If, however, there is no local interest, then DWR may establish a monitoring district, which will monitor groundwater elevations and charge local groundwater users for the costs of such monitoring.

Author's intent: This bill intends to expand the base of information as to California's groundwater use and use of water for agriculture generally, in order to improve the state's ability to plan for continued future growth and development. More than nine million Californians rely on groundwater as their sole source of supply. California is one of only two states without any comprehensive, statewide groundwater monitoring or regulation (i.e., Texas and California). This bill does not impose any regulation or change groundwater rights law, but improves public access to information about California's groundwater and agricultural water resources.

Surface water diversion reports: While existing law requires reporting of all water diversions to SWRCB, this bill extends existing penalties for the failure to file such required reports, including the civil/administrative fines and ineligibility for funding from State water programs.

Urban water management plans/energy: This bill just adds the element of energy production and use arising out of water supply plans to the analysis for urban water management plans. It also clarifies the notice and public process for considering adoption of such plans.

Agricultural water management plans: This bill expands the state's efforts to plan for the future of its water resources, by requiring agricultural water management plans for

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"agricultural water suppliers." Consistent with existing requirements for urban water management plans, 1986 legislation required agricultural water management plans, but that law expired in 1993.

The agricultural water management plans proposed in this bill include analysis of cost-effective water conservation projects to improve water supply reliability, as well as other information that provides a baseline of information as to the state's water resources used for agriculture. The bill also requires submission to, and review by, DWR, which is required to report to the Legislature as to the status of these plans, in general, and the results of these requirements. The previous dispute over the threshold for requiring such plans (i.e., 10,000 acre-feet vs. 50,000 acre-feet) has been resolved by requiring DWR to study and assess the appropriate threshold.

Analysis Prepared by : Alf W. Brandt / W., P. & W. / (916)  
319-2096

FN: 0016436

SENATE RULES COMMITTEE	SB 1640
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520	Fax: (916)
327-4478	

## UNFINISHED BUSINESS

Bill No: SB 1640  
 Author: Kuehl (D), et al  
 Amended: 8/7/06  
 Vote: 21

SENATE NATURAL RES. & WATER COMMITTEE : 6-0, 4/25/06  
 AYES: Kuehl, Margett, Kehoe, Lowenthal, Machado, Migden  
 NO VOTE RECORDED: Aanestad

SENATE APPROPRIATIONS COMMITTEE : 8-5, 5/25/06  
 AYES: Murray, Alarcon, Alquist, Escutia, Florez, Ortiz,  
 Romero, Torlakson  
 NOES: Aanestad, Ashburn, Battin, Dutton, Poochigian

SENATE FLOOR : 25-13, 6/1/06  
 AYES: Alarcon, Alquist, Bowen, Cedillo, Chesbro, Ducheny,  
 Dunn, Escutia, Figueroa, Florez, Kehoe, Kuehl, Lowenthal,  
 Machado, Margett, Migden, Murray, Ortiz, Perata, Romero,  
 Scott, Simitian, Soto, Torlakson, Vincent  
 NOES: Aanestad, Ackerman, Ashburn, Battin, Cox, Denham,  
 Dutton, Hollingsworth, Maldonado, McClintock, Morrow,  
 Poochigian, Runner  
 NO VOTE RECORDED: Speier, Vacancy

ASSEMBLY FLOOR : 46-32, 8/30/06 - See last page for vote

SUBJECT : Water

SOURCE : Author

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DIGEST : This bill amends disclosure requirements for certain information as to water use and planning.

Assembly Amendments (1) add a requirement that an agricultural water supplier would be required to prepare and submit to the Department of Water Resources (DWR), in years ending in three and eight, a report assessing progress in implementing the plan, (2) make explicit that nothing be construed to require the implementation of water conservation programs or practices that are not locally cost effective, (3) make explicit that agricultural water management plans are to also include a cost benefit analyses of all applicable water management practices, (4) clarify that entities with existing monitoring programs shall notify DWR, not request of DWR, that they will assume the monitoring responsibilities, (5) clarify that DWR must collaborate with the Department of Health Services to ensure that the agreements would not result in the inappropriate disclosure of the physical address or geographical location of drinking water sources, storage facilities, pumping operational data, or treatment facilities, (6) add a requirement that DWR prioritize groundwater basins and subbasins for the purpose of implementation, and (7) make other clarifying and technical changes.

ANALYSIS :

Existing Law

State Water Project (SWP) Reliability Report . On May 5, 2003, the Planning and Conservation League, et al, signed a

settlement agreement with DWR, et al, to resolve a lawsuit concerning the "Monterey Agreement." Among other provisions, this settlement agreement requires DWR to produce a biennial SWP reliability report.

Surface Water Reporting . Requires each person who diverts water after December 31, 1965, to file with the State Water Resources Control Board (SWRCB) a statement of diversion and use before July 1 of the succeeding year, with certain exceptions. These exceptions include diversions covered by an application, or a permit or license to appropriate water on file with the SWRCB. The SWRCB separately requires

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permit and license holders to report annual use as a condition of the permit or license. These exceptions also include diversions reported by DWR in its hydrologic data bulletins or diversions included in the consumptive use data for the delta lowlands published by DWR in its hydrologic data bulletins. Also, it is a misdemeanor to make a willful misstatement regarding statements of diversion or use and any person who makes a material misstatement under these provisions may be civilly liable. Statements filed pursuant to these provisions are for informational purposes only, and, except as noted above, neither the failure to file a statement nor any error in the information filed have any legal consequences.

California Water Plan (CWP) . The CWP is the plan for the orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state. Requires the CWP to include a discussion of specified topics, including (1) various strategies, including those relating to the development of new water storage facilities, water conservation, water recycling, desalination, conjunctive use, and water transfers that may be pursued in order to meet the future water needs of the state, and (2) the potential for alternative water pricing policies to change current and projected uses.

Urban Water Management Plans . Every urban water supplier is required to prepare and adopt an urban water management plan, as prescribed, including a requirement that the urban water supplier coordinate the preparation of the plan with other appropriate agencies, to the extent practicable. Also requires an urban water supplier to submit a copy of its plan to the department, the California State Library, and any city or county within which the supplier provides water supplies, and to make the plan available for public review during normal business hours.

If an urban water supplier fails to prepare, adopt, and submit an urban water management plan, it is ineligible for certain bond funds and drought assistance until it does so. Until January 1, 2006, also requires the department to take into consideration whether a plan has been submitted in determining eligibility for other program funds.

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Groundwater Management Plans . A local agency whose service area includes a groundwater basin that is not subject to groundwater management may adopt and implement a groundwater management plan pursuant to certain provisions of law.

Agricultural Water Management Plans . Until January 1, 1993, and thereafter only as specified, provides for the preparation and adoption of water management plans. Defines "agricultural water supplier" or "supplier" to mean a supplier, either publicly or privately owned, supplying more than 50,000 acre-feet of water annually for agricultural purposes.

DWR Groundwater Management Report . DWR was to conduct an investigation of the state's groundwater basins and report its findings to the Governor and Legislature by January 1,

1980. That report is commonly referred to as Bulletin 118. The Legislature has provided DWR funds to update Bulletin 118 on an irregular basis.

This bill:

- \_\_\_\_\_ 1. Codifies certain settlement provision arising out of 1994 "Monterey Agreement" litigation requiring DWR relating to estimation of SWP delivery capability.
2. Establishes consequences for failing to file statements of annual diversion or use for any surface water diversion or use occurring on or after January 1, 2007:
  - A. Bars those who fail to file required statements from receiving state funds from any program administered by the SWRCB, DWR, or the California Bay-Delta Authority.
  - B. Extends existing liability for civil fines to failure to file required reports, while requiring the board to consider specified factors for limiting the penalty.
- \_\_\_\_\_ 3. Adds requirements for already-required urban water management plans and CWP to include energy production information and provide certain notice and public

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process.

4. Requires agricultural water suppliers to prepare agricultural water management plans:
  - A. Requires DWR to study the threshold for requiring such plans and expresses legislative intent to adopt a threshold.
  - B. Requires analysis of agency's water supplies and uses, including evaluation of reasonable, practical, and cost-effective water conservation activities.
  - C. Requires distribution of such plans to certain state and local agencies and libraries, and posting on either the agency's or DWR's web site.
  - D. Requires DWR to analyze such plans and report to the Legislature regarding the status of such plans and their effect on promoting agricultural water use efficiency.
  - E. Denies state funding to agricultural water suppliers that fail to prepare required reports.
  - F. Requires DWR to report on the status of agricultural water management plans.
5. Establishes a statewide groundwater monitoring program by incorporating existing groundwater management programs and agencies into one comprehensive scheme, with oversight by DWR.
  - A. Expresses legislative intent to rely on local agencies for groundwater monitoring, while maintaining existing DWR network of monitoring wells.
  - B. Identifies and prioritizes categories of local agencies that may volunteer to monitor and report groundwater elevations, including (1) court-appointed watermasters or water management engineers, (2) groundwater management agencies, (3) other local agencies or counties managing all or a part of groundwater basin, (4) integrated regional water

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management agency, and (5) voluntary groundwater monitoring association, as defined.

- C. Requires volunteer agencies to submit certain information, including the agency's qualifications to monitor groundwater, to DWR for (1) evaluation of volunteer qualifications, (2) determination of the appropriate agency to monitor groundwater, either cooperatively or by application of the priorities above, and (3) development of monitoring and reporting protocols, deferring to existing programs.
- D. Requires monitoring agencies to report groundwater elevations starting on January 1, 2009.
- E. Requires DWR to determine the portions of basins with no monitoring and contact well owners in the area to encourage development of a groundwater management/monitoring or integrated regional water management.
- F. Requires DWR to establish a groundwater monitoring district for those areas where neither local well owners nor the affected county agree to monitor groundwater, including authority to charge well owners for monitoring costs.
- G. Authorizes creation of voluntary cooperative groundwater monitoring associations.
- H. Requires updating of DWR groundwater investigation, commonly called "Bulletin 118," in years ending in 00 and 05.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: Yes

According to the Assembly Appropriations Committee, estimated recurring costs of \$750,000, beginning in 2013-14 for the study of the use of energy related to water. Remaining costs are not reimbursable by the state, either because they may be recovered by local fees or other reasons.

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SUPPORT : (Verified 8/28/06)

Calleguas Municipal Water District  
City of Los Angeles  
Cucamonga Valley Water District  
East Bay Municipal Utility District  
Eastern Municipal Water District  
Groundwater Resources Association  
Inland Empire Utilities Agency  
Integrated Resource Management  
Las Virgenes Water District  
Long Beach Water Department  
Metropolitan Water District of Southern California  
Mono Lake Committee  
Natural Resources Defense Council  
Olivianian Municipal Water District  
Planning and Conservation League  
San Diego County Water Authority  
Santa Clara Valley Water District  
Sierra Club California  
Southern California Water Committee  
The Nature Conservancy  
United Water Conservation District  
Water Replenishment District of Southern California

OPPOSITION : (Verified 8/28/06)

Agricultural Council of California  
California Association of Winegrape Growers  
California Bean Shippers Association  
California Cattlemen's Association  
California Chamber of Commerce  
California Cotton Ginners Association  
California Cotton Growers Association  
California Farm Bureau Federation  
California Grain and Feed Association  
California Seed Association  
California Warehouse Association  
California Women for Agriculture  
Friant Water Authority  
Nisei Farmers League  
Pacific Egg and Poultry Association

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Siskiyou County  
Western Growers  
Wine Institute

ASSEMBLY FLOOR :

AYES: Arambula, Baca, Bass, Berg, Bermudez, Calderon,  
Canciamilla, Chan, Chavez, Chu, Cohn, Coto, De La Torre,  
Dymally, Evans, Frommer, Goldberg, Hancock, Jerome  
Horton, Jones, Karnette, Klehs, Koretz, Laird, Leno,  
Levine, Lieber, Lieu, Liu, Montanez, Mullin, Nation,  
Nava, Oropeza, Parra, Pavley, Ridley-Thomas, Ruskin,  
Saldana, Salinas, Torrico, Umberg, Vargas, Wolk, Yee,  
Nunez

NOES: Aghazarian, Benoit, Blakeslee, Bogh, Cogdill,  
Daucher, DeVore, Emmerson, Garcia, Haynes, Shirley  
Horton, Houston, Huff, Keene, La Malfa, La Suer, Leslie,  
Matthews, Maze, McCarthy, Mountjoy, Nakanishi, Niello,  
Plescia, Richman, Sharon Runner, Spitzer, Strickland,  
Tran, Villines, Walters, Wyland

NO VOTE RECORDED: Negrete McLeod, Vacancy

CTW/AGB:mel 8/31/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*



## SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Darrell Steinberg, Chair  
2007-2008 Regular Session

**BILL NO:** SB 178

**AUTHOR:** Steinberg

**VERSION:** As Introduced

**FISCAL:** Yes

**SUBJECT:** Groundwater

**HEARING DATE:** March 27, 2007

**URGENCY:** No

**CONSULTANT:** Dennis O'Connor

### BACKGROUND AND EXISTING LAW

California does not have any statewide laws governing groundwater supplies. However:

1. The State Does Have Statewide Laws Governing Groundwater Quality. In particular, the Porter Cologne Act, among other things, directs the State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards to promulgate and enforce statewide regulations governing groundwater quality.
2. The State Does Have Laws Governing Groundwater Supplies In Some Parts Of The State. For example, in the counties of Riverside, San Bernardino, Los Angeles, and Ventura, current law requires any person who extracts groundwater in excess of 25 acre-feet in any year to file an annual notice of extraction with the SWRCB. This requirement, with certain exceptions, applies to any groundwater extracted after 1955. Moreover, after 1959, failure to file a notice for any calendar year within 6 months after the end of that calendar year is deemed equal to nonuse of the groundwater.
3. The Legislature Has Created 13 Special Act Districts To Manage Groundwater Supplies. These districts include Orange County Water District, Santa Clara Valley Water District, Monterey Peninsula Water Management District, and Long Valley Groundwater Management District.
4. Current Law Requires DWR To Study & Report On Groundwater Conditions. Current law only requires the Department of Water Resources to report its findings to the Governor and the Legislature no later than January 1, 1980. DWR has updated this report infrequently and only upon appropriation of funds for that purpose.

### PROPOSED LAW

This bill would establish a statewide groundwater elevation monitoring program as follows:

- Local groundwater management interests would notify DWR as to who would conduct the monitoring of groundwater elevations, what area they would monitor, their qualifications for conducting the monitoring, etc.

- If more than one party seeks to become the monitoring entity for the same portion of a basin or subbasin, DWR would consult with the interested parties to determine who would perform the monitoring functions. In determining which party would conduct the monitoring, DWR would be required to adhere to the following order:
  1. A watermaster or water management engineer who was appointed by a court as a part of an adjudication proceeding.
  2. (a) A groundwater management agency with statutory authority to manage groundwater pursuant to its principle act, or  
(b) A water replenishment district.
  3. (a) A local agency that is managing all or part of a groundwater basin or subbasin under what is known as an AB 3030 plan (Water Code Section 10750 et seq.), or.  
(b) A local agency or county that is managing all or part of a groundwater basin pursuant to any other legally enforceable groundwater management plan with provisions that are substantively similar to AB 3030.
  4. A local agency that is managing all or part of a groundwater basin or subbasin pursuant to an integrated regional water management plan that includes a groundwater management component that complies with the requirements of SB 1938 (Water Code Section 10753.7).
  5. A county that is not currently managing all or a part of a groundwater basin.
  6. A voluntary cooperative groundwater monitoring association formed pursuant to this bill.
- Monitoring entities would be required to start monitoring and reporting groundwater elevations by January 1, 2010. The groundwater elevation data would be made readily available to DWR, interested parties, and the public.
- By January 1, 2010, DWR would begin to identify the extent of monitoring of groundwater elevations that is being undertaken within each basin and subbasin. If DWR determines that no one is monitoring all or part of a basin or subbasin, DWR would be required to determine if there was a local party willing to conduct the monitoring.
- If (a) DWR determines there is no local interest in conducting the monitoring, and (b) DWR determines the existing monitoring network is insufficient to demonstrate seasonal and long term trends in groundwater elevations, and (c) Board of Mining and Geology concurs with that determination; then DWR would be authorized to monitor groundwater elevations and to assess a fee to well owners within the DWR monitored area to recover its direct costs.

This bill would also require DWR to update the groundwater report by January 1, 2010, and thereafter in years ending in 5 and 0.

## **ARGUMENTS IN SUPPORT**

The Author, quoting from PPIC's report "Water for Growth: California's New Frontier," notes that, "Groundwater is the largest single source of new supplies projected by the [urban water management plans], and two-thirds of the increase is projected in areas outside fully managed basins. In some of these areas, conflicts have already begun to emerge, as developers plan to use groundwater to supply new housing projects."

According to the Author, “California’s don’t ask – don’t tell” policy for groundwater is not working. While the state has over 500 distinct groundwater basins and subbasins, no one has oversight or management responsibilities over all or even part of any of these groundwater basins or subbasins unless a court has ordered it, the Legislature has established a special district to do it, or a voluntary group of groundwater users chose to do it. For much of the state, this means that no one is looking out for groundwater.”

According to the Sierra Club, “Currently, more than nine million Californians rely on groundwater as their sole source of supply. And, while demands on groundwater are growing, information about the condition of the state’s groundwater is lacking. The #1 finding of DWR’s latest Groundwater Bulletin stated: “Groundwater provides about 30% of the State’s water supply in an average year, yet in many basins the amount of groundwater extracted annually is not accurately known.”

According to the Groundwater Resources Association (GRA), “GRA strongly believes that the requirements outlined in SB 178 will help the State manage its water needs. The monitoring and information required in SB 178 is essential to planning for the State’s water needs and should be taken into consideration now, as funding decisions are considered by the Legislature.”

## **ARGUMENTS IN OPPOSITION**

According to Western Growers, “Under the bill’s current structure, the Department of Water Resources (Department) is authorized to select which local entity will be responsible for local monitoring activities and does not allow for any entity or individual who can meet the technical requirements to submit data. It is our organization’s view that no entity should be given control in producing and submitting such data.”

“Additionally, the Department already has a widespread system of groundwater monitoring wells that generate data and many areas of the state employ successful local groundwater management strategies. Rather than place a state mandate on local entities, it would be more appropriate for the state to use the current information from its existing wells and use general fund monies to fully fund operation of its existing groundwater monitoring system.”

“Fundamentally, the members of Western Growers consider groundwater resources as a local, rather than state, resource. The use of underlying groundwater is a real property right in California and published California case law has determined that groundwater is not a public trust resource. The correlative overlying right to use groundwater is an affair between overlying water users of any given basin and should not become an affair between landowners and the state.”

## **COMMENTS**

Case Law Is Silent On Public Trust. It is often asserted that groundwater is not a public trust resource. In general, the public trust doctrine posits that the sovereign owns all of its navigable waterways and the lands lying beneath them as trustee of a public trust for the benefit of the people. However, the Constitution, the statutes, and case law are silent on (1) whether or not groundwater specifically is or is not a public trust resource, as well as (2) under what circumstances groundwater might or might not be considered a public trust resource. One case, *Santa Teresa Citizens Action Group v. City of San Jose*, is occasionally cited as substantiating the position that groundwater is not a public trust resource. However, in that case, the California

Court of Appeal found that the public trust issue under consideration was not ripe for decision. Therefore, we can conclude nothing based on this case.

### **SUGGESTED AMENDMENTS**

None

### **SUPPORT**

Groundwater Resources Association  
Sierra Club California

### **OPPOSITION**

Western Growers  
Regional Council of Rural Counties

**Senate Appropriations Committee Fiscal Summary**  
**Senator Tom Torlakson, Chairman**

**SB 178 (Steinberg)**

**Hearing Date:** 4/16/07

**Amended:** As Introduced

**Consultant:** Miriam Barcellona Ingenito

**Policy Vote:** NR&W 6-1

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**BILL SUMMARY:** SB 178 would establish a statewide program for groundwater monitoring.

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**Fiscal Impact (in thousands)**

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<b><u>Major Provisions</u></b>	<b><u>2007-08</u></b>	<b><u>2008-09</u></b>	<b><u>2009-10</u></b>	<b><u>Fund</u></b>
Develop/maintain data management systems	\$1,000	\$2,000	\$2,000	GF/SF*
Groundwater basin investigation and reporting	\$2,500	\$5,000	\$5,000	GF

\*New Fee established in bill

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**STAFF COMMENTS:** This bill meets the criteria for referral to the Suspense file.

SB 178 would establish a statewide groundwater elevation monitoring program. Under the provisions of the program, the Department of Water Resources (DWR) would be required to receive and evaluate qualifications of those seeking to conduct the required monitoring. If there is no entity willing to do the monitoring, DWR would be required to step in. Additionally, DWR would be required to prepare a groundwater report by January 1, 2010 and every five years thereafter.

DWR estimates that it will cost about \$2 million to develop and maintain the data management system in the first two years, and about \$1 million annually thereafter. DWR also indicates that it would need about \$5 million annually, for three years, to prepare the 2010 Groundwater Supply report and \$3-\$4 million annually thereafter to produce subsequent reports.

**STAFF NOTES** that SB 178 authorizes DWR to recover its costs for conducting the necessary monitoring from the local groundwater users but it does not specify where the funds are to be deposited. Additionally, SB 178 does not give DWR the authority to charge a fee to all groundwater users to cover its costs to manage the monitoring system database and write the required reports.

**Senate Appropriations Committee Fiscal Summary**  
**Senator Tom Torlakson, Chairman**

**SB 178 (Steinberg)**

**Hearing Date:** 5/31/07

**Amended:** As Introduced

**Consultant:** Miriam Barcellona Ingenito

**Policy Vote:** NR&W 6-1

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**BILL SUMMARY:** SB 178 would establish a statewide program for groundwater monitoring.

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**Fiscal Impact (in thousands)**

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<u>Major Provisions</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>Fund</u>
Develop/maintain data management systems	\$1,000	\$2,000	\$2,000	GF/SF*

\*Reimbursed through new fee established in bill

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**STAFF COMMENTS: SUSPENSE FILE.**

SB 178 would establish a statewide groundwater elevation monitoring program. Under the provisions of the program, the Department of Water Resources (DWR) would be required to receive and evaluate qualifications of those seeking to conduct the required monitoring. If there is no entity willing to do the monitoring, DWR would be required to step in. Additionally, DWR would be required to prepare a groundwater report by January 1, 2010 and every five years thereafter.

DWR estimates that it will cost about \$2 million to develop and maintain the data management system in the first two years, and about \$1 million annually thereafter.

**Staff notes that** DWR already has a groundwater elevations database and this estimate appears to be high.

DWR also indicates that it would need about \$5 million annually, for three years, to prepare the 2010 Groundwater Supply report and \$3-\$4 million annually thereafter to produce subsequent reports. **Staff notes that** this report, also known as Bulletin 118, was last updated in 2003 for about \$1 million. DWR was not able to substantiate this estimate and therefore it is not reflected in the fiscal box above.

**STAFF NOTES** that SB 178 authorizes DWR to recover its costs for conducting the necessary monitoring from the local groundwater users but it does not specify where the funds are to be deposited. Additionally, SB 178 does not give DWR the authority to charge a fee to all groundwater users to cover its costs to manage the monitoring system database and write the required reports. This could result in some portion of the total costs not being reimbursed.

Date of Hearing: July 3, 2007

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE

Lois Wolk, Chair

SB 178 (Steinberg) – As Introduced: February 5, 2007

SENATE VOTE: 24-13

SUBJECT: Groundwater elevation monitoring

SUMMARY: Establishes a statewide groundwater monitoring program by incorporating existing groundwater management programs and agencies into one comprehensive scheme, with oversight by the Department of Water Resources (DWR). Specifically, this bill:

- 1) Expresses legislative intent to rely on local agencies for groundwater monitoring, while maintaining existing DWR network of monitoring wells.
- 2) Identifies and prioritizes categories of local agencies that may volunteer to monitor and report groundwater elevations, including:
  - a) court-appointed watermasters or water management engineers;
  - b) management agencies;
  - c) local agencies or counties managing all or a part of groundwater basin;
  - d) integrated regional water management agency; and,
  - e) voluntary groundwater monitoring association, as defined.
- 3) Requires volunteer agencies to submit certain information, including the agency's qualifications to monitor groundwater, to DWR for:
  - a) evaluation of volunteer qualifications;
  - b) determination of the appropriate agency to monitor groundwater, either cooperatively or by application of the priorities above; and,
  - c) development of monitoring and reporting protocols, deferring to existing programs.
- 4) Requires monitoring agencies to report groundwater elevations starting on January 1, 2009;
- 5) Requires DWR to determine the portions of basins with no monitoring and contact well owners in the area to encourage development of a groundwater management/monitoring or integrated regional water management;
- 6) Requires DWR to establish a groundwater monitoring district for those areas where neither local well owners nor the affected county agree to monitor groundwater, including authority to charge well owners for monitoring costs;
- 7) Authorizes creation of voluntary cooperative groundwater monitoring associations; and,
- 8) Requires updating of DWR groundwater investigation, commonly called "Bulletin 118," in years ending in 00 and 05.



EXISTING LAW requires filing of annual groundwater extraction reports by groundwater users in four Southern California counties (Riverside, San Bernardino, Los Angeles, and Ventura), and allows local agencies to form groundwater management entities.

FISCAL EFFECT: According to the Senate Appropriations Committee, DWR estimates that it will cost approximately \$2 million to set up and \$1 million annually to manage the groundwater monitoring system.

COMMENTS: This bill comes reintroduces, verbatim, the groundwater elevation monitoring proposal from last year's SB 1640 (Kuehl), which provided the primary reason for the governor to veto the bill. In his veto message, the governor expressed three concerns with this proposal on groundwater monitoring: a) lack of appropriation to pay for the system; b) lack of need, because DWR already produces a report on groundwater supplies, Bulletin 118; and c) property rights in groundwater. This bill has not been amended to address the governor's veto, but separates out this one groundwater monitoring part, which continues to have opposition, from the remaining parts of the bill, which enjoy broad support and are now in SB 862 (Kuehl).

This bill takes another step in improving groundwater management capability, by expanding the information available to state and local agencies beyond water districts. Such reports and plans allow the broader community, including city and county governments, to learn more about the conditions of the state's valuable and limited water resources, which are owned by the people. (Overlying property owners have only the right to use the water underlying their lands, subject to the limitation of "reasonable use.")

This bill intends to expand the base of information as to California's groundwater use, in order to improve the state's ability to plan for continued future growth and development. More than nine million Californians rely on groundwater as their sole source of supply. California is one of only two states without any comprehensive, statewide groundwater monitoring or regulation (i.e., Texas and California). This bill does not impose any regulation or change groundwater rights law, but improves public access to information about California's groundwater resources.

The proposed groundwater monitoring system relies, for the most part, on voluntary, local reporting of groundwater elevation. This voluntary program is consistent with California's policy of authorizing local agencies to work together to develop groundwater management plans, often called "AB 3030 plans." This voluntary system focusing on groundwater elevation reflects a change from a previous bill, SB 820 (Kuehl/2005), which mandated individual reporting of groundwater extractions, consistent with existing requirements for groundwater extractors in four Southern California counties. If, however, no local agency agrees to monitor groundwater elevation, then DWR may monitor such elevation and charge local groundwater extractors for the costs of such monitoring. This is the provision that has led to the continued opposition from agricultural interests.

The bill requires DWR to take a leading role in ensuring that all the groundwater basins are being monitored. While DWR currently operates some monitoring wells and reports on groundwater generally in Bulletin 118, the State's knowledge of its groundwater resources is not comprehensive.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County &  
Municipal Employees  
California Coastkeeper Alliance  
California League of Conservation Voters  
Clean Water Action  
Defenders of Wildlife  
East Bay Municipal Utility District  
Environment California

Groundwater Resources Association  
Los Angeles Mayor Antonio Villaraigosa  
Metropolitan Water District of So. Cal.  
Planning and Conservation League  
Santa Clara Valley Water District  
Sierra Club California  
The Nature Conservancy  
Western Municipal Water District

Opposition

CA Cattlemen's Association  
CA Farm Bureau Federation  
Desert Water Agency

Friant Water Authority  
Howard Jarvis Taxpayers Association  
Western Growers

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

**SENATE RULES COMMITTEE****SB 178**

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

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**THIRD READING**

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Bill No: SB 178

Author: Steinberg (D) and Kuehl (D)

Amended: As introduced

Vote: 21

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**SENATE NATURAL RES. & WATER COMMITTEE:** 6-1, 3/27/07

AYES: Steinberg, Margett, Kehoe, Kuehl, Machado, Migden

NOES: Hollingsworth

NO VOTE RECORDED: Cogdill

**SENATE APPROPRIATIONS COMMITTEE:** 10-6, 5/31/07

AYES: Torlakson, Cedillo, Corbett, Florez, Kuehl, Oropeza, Ridley-Thomas, Simitian, Steinberg, Yee

NOES: Cox, Aanestad, Ashburn, Dutton, Runner, Wyland

NO VOTE RECORDED: Battin

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**SUBJECT:** Groundwater**SOURCE:** Author

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**DIGEST:** This bill establishes a statewide groundwater elevation monitoring program.**ANALYSIS:** California does not have any statewide laws governing groundwater supplies.

California does have statewide laws governing groundwater quality. In particular, the Porter Cologne Act, among other things, directs the State Water Resources Control Board (SWRCB) and the regional water quality control boards to promulgate and enforce statewide regulations governing groundwater quality.

CONTINUED

California does have laws governing groundwater supplies in some parts of the state. For example, in the counties of Riverside, San Bernardino, Los Angeles and Ventura, current law requires any person who extracts groundwater in excess of 25 acre-feet in any year to file an annual notice of extraction with the SWRCB. This requirement, with certain exceptions, applies to any groundwater extracted after 1955. Moreover, after 1959, failure to file a notice for any calendar within six months after the end of that calendar year is deemed equal to nonuse of the groundwater.

The Legislature has created 13 special act districts to manage groundwater supplies. Included in these districts are Orange County Water District, Santa Clara Valley Water District, Monterey Peninsula Water Management District and Long Valley Groundwater Management District.

Current law requires the Department of Water Resources (DWR) to report on groundwater conditions. Current law only requires DWR to reports its findings to the Governor and the Legislature no later than January 1, 1980. DWR has updated this report infrequently and only upon appropriation of funds for that purpose.

This bill establishes a statewide groundwater elevation monitoring program as follows:

1. Local groundwater management interests will notify DWR as to who will conduct the monitoring of groundwater elevations, what area they will monitor, their qualifications for conducting the monitoring, etc.
2. If more than one party seeks to become the monitoring entity for the same portion of a basin or subbasin, DWR will consult with the interested parties to determine who will perform the monitoring functions. In determining which party will conduct the monitoring, DWR will be required to adhere to the following order:
  - A. A watermaster or water management engineer who was appointed by a court as a part of an adjudication proceeding.
  - B. A groundwater management agency with statutory authority to manage groundwater pursuant to its principal act or a water replenishment district.

- C. A local agency that is managing all or part of a groundwater basin or subbasin under what is known as an AB 3030 plan (Water Code Section 10750 et seq.), or a local agency or county that is managing all or part of a groundwater basin pursuant to any other legally enforceable groundwater management plan with provisions that are substantively similar to AB 3030.
  - D. A local agency that is managing all or part of a groundwater basin or subbasin pursuant to an integrated regional water management plan that includes a groundwater management component that complies with the requirements of SB 1938 (Water Code Section 10753.7).
  - E. A county that is not currently managing all or part of a groundwater basin.
  - F. A voluntary cooperative groundwater monitoring association formed pursuant to this bill.
- 3. Monitoring entities will be required to begin monitoring and reporting groundwater elevations by January 1, 2010. The groundwater elevation data will be made readily available to DWR, interested parties and the public.
  - 4. By January 1, 2010, DWR will begin to identify the extent of monitoring of groundwater elevations that is being undertaken within each basin and subbasin. If DWR determines that no one is monitoring all or part of a basin or subbasin, DWR will be required to determine if there was a local party willing to conduct the monitoring.
  - 5. If DWR determines there is no local interest in conducting the monitoring and the existing monitoring network is insufficient to demonstrate seasonal and long term trends in groundwater elevations, and the Board of Mining and Geology concurs with that determination, then DWR will be authorized to monitor groundwater elevations and to assess a fee to well owners within the DWR monitored area to recover its direct costs.

This bill also requires DWR to update the groundwater report by January 1, 2010, and thereafter in years ending in five and zero.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

CONTINUED

## Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>Fund</u>
Develop/maintain data management systems	\$1,000	\$2,000	\$2,000	GF/SF*

**SUPPORT:** (Verified 6/1/07)

Groundwater Resources Association  
Sierra Club California

**OPPOSITION:** (Verified 6/1/07)

Department of Finance  
Western Growers Association  
Regional Council of Rural Counties

**ARGUMENTS IN SUPPORT:** According to the author's office, "California's don't ask – don't tell" policy for groundwater is not working. While the state has over 500 distinct groundwater basins and subbasins, no one has oversight or management responsibilities over all or even part of any of these groundwater basins or subbasins unless a court has ordered it, the Legislature has established a special district to do it, or a voluntary group of groundwater users chose to do it. For much of the state, this means that no one is looking out for groundwater."

According to the Sierra Club, "Currently, more than nine million Californians rely on groundwater as their sole source of supply. And, while demands on groundwater are growing, information about the condition of the state's groundwater is lacking. The #1 finding of DWR's latest Groundwater Bulletin stated: "Groundwater provides about 30% of the State's water supply in an average year, yet in many basins the amount of groundwater extracted annually is not accurately known."

According to the Groundwater Resources Association (GRA), "GRA strongly believes that the requirements outlined in SB 178 will help the State manage its water needs. The monitoring and information required in SB 178

CONTINUED

is essential to planning for the State's water needs and should be taken into consideration now, as funding decisions are considered by the Legislature."

**ARGUMENTS IN OPPOSITION:** According to Western Growers Association, "Under the bill's current structure, the Department of Water Resources (Department) is authorized to select which local entity will be responsible for local monitoring activities and does not allow for any entity or individual who can meet the technical requirements to submit data. It is our organization's view that no entity should be given control in producing and submitting such data.

"Additionally, the Department already has a widespread system of groundwater monitoring wells that generate data and many areas of the state employ successful local groundwater management strategies. Rather than place a state mandate on local entities, it would be more appropriate for the state to use the current information from its existing wells and use general fund monies to fully fund operation of its existing groundwater monitoring system.

"Fundamentally, the members of Western Growers consider groundwater resources as a local, rather than state, resource. The use of underlying groundwater is a real property right in California and published California case law has determined that groundwater is not a public trust resource. The correlative overlying right to use groundwater is an affair between overlying water users of any given basin and should not become an affair between landowners and the state."

CTW:cm 6/1/07 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*



Date of Hearing: August 22, 2007

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Mark Leno, Chair

SB 178 (Steinberg) – As Amended: July 17, 2007

Policy Committee: Water, Parks & Wildlife

Vote: 8-3

Urgency: No

State Mandated Local Program: No

Reimbursable:

SUMMARY

This bill establishes a statewide groundwater elevation monitoring (GEM) program coordinated by the Department of Water Resources (DWR).

FISCAL EFFECT

- 1) Moderate GF costs, in the range of \$350,000 in 2008-09, to DWR to establish the statewide GEM process and to work with each monitoring entity on the appropriate protocol for particular basins.
- 2) Substantial GF costs, in the range of \$1million annually for two years starting 2007-08, to DWR to develop the groundwater basin report due in 2010, and \$2 million in 2014-15 and every five years thereafter to produce subsequent reports.

SUMMARY CONTINUED

Specifically, this bill:

- 1) Allows any of the following local agencies to assume GEM responsibility and reporting groundwater elevations, starting January 1, 2010, for a particular basin:
  - a) A court-appointed watermaster or water management engineer.
  - b) A groundwater management agency or a water replenishment district.
  - c) A county or other local agency that manages all or part of a basin.
  - d) An integrated regional water management agency.
  - e) A voluntary cooperative groundwater monitoring association that is formed under the bill's provisions.
- 2) Specifies the process by which these local agencies notify DWR, by January 1, 2009, of their intention to assume GEM functions, requires DWR to follow the order of agencies listed in #1 above in determining which agency will perform GEM functions, and requires the department to notify the agency that it has been selected the monitoring entity for a particular groundwater basin.
- 3) Requires DWR to work with each selected entity to determine the manner in which GEM information should be reported to the department, to recommend GEM improvements, and to

allow an entity's existing GEM program to be used if the information generated adequately demonstrates seasonal and long-term trends in groundwater elevations.

- 4) Requires DWR, by January 1, 2010, to start identifying the extent of GEM within each basin and to set priorities regarding which basins to focus on first.
- 5) Allows a voluntary cooperative groundwater monitoring association to be formed to perform GEM functions for a particular basin and requires DWR to work with interested parties to facilitate the formation of such an association.
- 6) Updates a 1980 groundwater basin report (known as Bulletin 118-80), requires the update to be submitted to the Legislature and governor by January 1, 2010 and quintennially thereafter, and requires the report to include a discussion of the progress of the GEM program.

#### COMMENTS

- 1) Rationale. The author contends that DWR does not currently have enough data regarding groundwater elevations to effectively project long-term supply and needs. Because groundwater extractions only have to be reported in four counties and because most groundwater basins are not managed to ensure adequate supply and beneficial use, there is little information to help ensure the long-term well-being and availability of groundwater supplies in California. The author believes SB 178, on a voluntary and cooperative basis with local groundwater management entities, will expand the base of information on California's groundwater use and the viability of its long-term supplies.
- 2) Prior Legislation. SB 820 (Kuehl) of 2005 and SB 1640 (Kuehl) of 2006 contained provisions similar to this bill's GEM provisions. SB 820 and SB 1640, both vetoed by the governor, also contained provisions on surface water supply and agricultural water use. This year, these provisions have been separated into two bills: SB 178 and SB 862 (Kuehl).
- 3) Bulletin 118. In 1975, DWR published Bulletin 118-75 on California's Groundwater. The report summarized available information from DWR, the U.S. Geological Survey and other agencies for individual groundwater basins to better enable policymakers to address issues related to the protection, use and management of the state's groundwater resources.

SB 1505 (Nejedly) – Chapter 601, Statutes of 1978 statutorily required Bulletin 118 to be updated by 1980. DWR published the report as Bulletin 118-80, Ground Water Basins in California, included 36 groundwater basins. Bulletin 118, though not statutorily required, was last updated by DWR in 2003.

Analysis Prepared by: Steve Archibald / APPR. / (916) 319-2081

## SENATE THIRD READING

SB 178 (Steinberg)

As Amended July 17, 2007

Majority vote

SENATE VOTE: 24-13

WATER, PARKS & WILDLIFE	8-3	APPROPRIATIONS	11-5
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Ayes: Wolk, Caballero, Charles Calderon,  
Huffman, Lieu, Mullin, Parra, Salas

Ayes: Leno, Caballero, Davis, DeSaulnier,  
Huffman, Karnette, Krekorian, Lieu,  
Ma, Solorio, De Leon

Nays: Maze, Berryhill, La Malfa

Nays: Walters, Emmerson, La Malfa,  
Nakanishi, Sharon Runner

SUMMARY: Establishes a statewide groundwater monitoring program by incorporating existing groundwater management programs and agencies into one comprehensive scheme, with oversight by the Department of Water Resources (DWR). Specifically, this bill:

- 1) Expresses legislative intent to rely on local agencies for groundwater monitoring, while maintaining existing DWR network of monitoring wells.
- 2) Identifies and prioritizes categories of local agencies that may volunteer to monitor and report groundwater elevations, including:
  - a) Court-appointed watermasters or water management engineers;
  - b) Management agencies;
  - c) Local agencies or counties managing all or a part of groundwater basin;
  - d) Integrated regional water management agency; and,
  - e) Voluntary groundwater monitoring association, as defined.
- 3) Requires volunteer agencies to submit certain information, including the agency's qualifications to monitor groundwater, to DWR for:
  - a) Evaluation of volunteer qualifications;
  - b) Determination of the appropriate agency to monitor groundwater, either cooperatively or by application of the priorities above; and,
  - c) Development of monitoring and reporting protocols, deferring to existing programs.
- 4) Requires monitoring agencies to report groundwater elevations starting on January 1, 2009.
- 5) Requires DWR to determine the portions of basins with no monitoring and contact well owners in the area to encourage development of groundwater management/monitoring or integrated regional water management.
- 6) Authorizes creation of voluntary cooperative groundwater monitoring associations.

- 7) Requires updating of DWR groundwater investigation, commonly called "Bulletin 118," in years ending in 00 and 05, and the addition of certain information regarding groundwater monitoring.

EXISTING LAW requires filing of annual groundwater extraction reports by groundwater users in four Southern California counties (Riverside, San Bernardino, Los Angeles, and Ventura), and allows local agencies to form groundwater management entities.

FISCAL EFFECT: Assembly Appropriations Committee estimates costs of \$350,000 for establishing the groundwater monitoring system and \$2 million every five years to prepare the groundwater report, starting with the 2010 report.

COMMENTS: This bill takes another step in improving groundwater management capability, by expanding the information available to state and local agencies beyond water districts. Such reports and plans allow the broader community, including city and county governments, to learn more about the conditions of the state's valuable and limited water resources, which are owned by the people. (Overlying property owners have only the right to use the water underlying their lands, subject to the limitation of "reasonable use.")

SB 178 intends to expand the base of information as to California's groundwater use, in order to improve the state's ability to plan for continued future growth and development. More than nine million Californians rely on groundwater as their sole source of supply. California is one of only two states without any comprehensive, statewide groundwater monitoring or regulation (i.e., Texas and California). This bill does not impose any regulation or change groundwater rights law, but improves public access to information about California's groundwater resources.

The proposed groundwater monitoring system relies on voluntary, local reporting of groundwater elevation. This voluntary program is consistent with California's policy of authorizing local agencies to work together to develop groundwater management plans, often called "AB 3030 plans." This voluntary system focusing on groundwater elevation reflects a change from a previous bill, SB 820 (Kuehl/2005), which mandated individual reporting of groundwater extractions, consistent with existing requirements for groundwater extractors in four Southern California counties.

The bill requires DWR to take a leading role in ensuring that all the groundwater basins are being monitored. While DWR currently operates some monitoring wells and reports on groundwater generally in Bulletin 118, the State's knowledge of its groundwater resources is not comprehensive.

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

FN: 0002692

**SENATE RULES COMMITTEE****SB 178**

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

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**UNFINISHED BUSINESS**

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Bill No: SB 178

Author: Steinberg (D) and Kuehl (D)

Amended: 7/17/07

Vote: 21

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**SENATE NATURAL RES. & WATER COMMITTEE:** 6-1, 3/27/07

AYES: Steinberg, Margett, Kehoe, Kuehl, Machado, Migden

NOES: Hollingsworth

NO VOTE RECORDED: Cogdill

**SENATE APPROPRIATIONS COMMITTEE:** 10-6, 5/31/07

AYES: Torlakson, Cedillo, Corbett, Florez, Kuehl, Oropeza, Ridley-Thomas, Simitian, Steinberg, Yee

NOES: Cox, Aanestad, Ashburn, Dutton, Runner, Wyland

NO VOTE RECORDED: Battin

**SENATE FLOOR:** 24-13, 6/4/07

AYES: Alquist, Cedillo, Corbett, Correa, Florez, Kehoe, Kuehl, Lowenthal, Machado, Margett, Migden, Negrete McLeod, Oropeza, Padilla, Perata, Ridley-Thomas, Romero, Scott, Simitian, Steinberg, Torlakson, Vincent, Wiggins, Yee

NOES: Aanestad, Ackerman, Ashburn, Calderon, Cogdill, Cox, Denham, Harman, Hollingsworth, Maldonado, McClintock, Runner, Wyland

NO VOTE RECORDED: Battin, Ducheny, Dutton

**ASSEMBLY FLOOR:** 44-32, 9/5/07 - See last page for vote

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**SUBJECT:** Groundwater**SOURCE:** Author

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CONTINUED

**DIGEST:** This bill establishes a statewide groundwater monitoring program by incorporating existing groundwater management programs and agencies into one comprehensive scheme, with oversight by the Department of Water Resources.

Assembly Amendments eliminate the authorization for the Department of Water Resources to impose a monitoring district and, instead, require the Department of Water Resources to discuss the extent of the monitoring of groundwater elevations in its groundwater bulletin, and clarify that the bill does not change any provision of California law related to groundwater other than as expressly set forth in the bill.

**ANALYSIS:** California does not have any statewide laws governing groundwater supplies.

California does have statewide laws governing groundwater quality. In particular, the Porter Cologne Act, among other things, directs the State Water Resources Control Board (SWRCB) and the regional water quality control boards to promulgate and enforce statewide regulations governing groundwater quality.

California does have laws governing groundwater supplies in some parts of the state. For example, in the counties of Riverside, San Bernardino, Los Angeles and Ventura, current law requires any person who extracts groundwater in excess of 25 acre-feet in any year to file an annual notice of extraction with the SWRCB. This requirement, with certain exceptions, applies to any groundwater extracted after 1955. Moreover, after 1959, failure to file a notice for any calendar within six months after the end of that calendar year is deemed equal to nonuse of the groundwater.

The Legislature has created 13 special act districts to manage groundwater supplies. Included in these districts are Orange County Water District, Santa Clara Valley Water District, Monterey Peninsula Water Management District and Long Valley Groundwater Management District.

Current law requires the Department of Water Resources (DWR) to report on groundwater conditions. Current law only requires DWR to reports its findings to the Governor and the Legislature no later than January 1, 1980. DWR has updated this report infrequently and only upon appropriation of funds for that purpose.

This bill:

1. Expresses legislative intent to rely on local agencies for groundwater monitoring, while maintaining existing DWR network of monitoring wells.
2. Identifies and prioritizes categories of local agencies that may volunteer to monitor and report groundwater elevations, including:
  - A. Court-appointed watermasters or water management engineers.
  - B. Management agencies.
  - C. Local agencies or counties managing all or part of groundwater basin.
  - D. Integrated regional water management agency.
  - E. Voluntary groundwater monitoring association, as defined.
3. Requires volunteer agencies to submit certain information, including that agency's qualifications to monitor groundwater, to DWR for:
  - A. Evaluation of volunteer qualifications.
  - B. Determination of the appropriate agency to monitor groundwater, either cooperatively or by application of the priorities above.
  - C. Development of monitoring and reporting protocols, deferring to existing programs.
4. Requires monitoring agencies to report groundwater elevations starting on January 1, 2009.
5. Requires DWR to determine the portions of basins with no monitoring and contact well owners in the area to encourage development of groundwater management/monitoring or integrated regional water management.
6. Authorizes creation of voluntary cooperative groundwater monitoring associations.

CONTINUED



7. Requires updating of DWR groundwater investigation, commonly called “Bulletin 118,” in years ending in 00 and 05, and the addition of certain information regarding groundwater monitoring.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

The Assembly Appropriations Committee estimates costs of \$350,000 for establishing the groundwater monitoring system and \$2 million every five years to prepare the groundwater report, beginning with the 2010 report.

**SUPPORT:** (Verified 9/5/07)

Groundwater Resources Association  
Sierra Club California

**ARGUMENTS IN SUPPORT:** According to the author’s office, “California’s don’t ask – don’t tell” policy for groundwater is not working. While the state has over 500 distinct groundwater basins and subbasins, no one has oversight or management responsibilities over all or even part of any of these groundwater basins or subbasins unless a court has ordered it, the Legislature has established a special district to do it, or a voluntary group of groundwater users chose to do it. For much of the state, this means that no one is looking out for groundwater.”

According to the Sierra Club, “Currently, more than nine million Californians rely on groundwater as their sole source of supply. And, while demands on groundwater are growing, information about the condition of the state’s groundwater is lacking. The #1 finding of DWR’s latest Groundwater Bulletin stated: “Groundwater provides about 30% of the State’s water supply in an average year, yet in many basins the amount of groundwater extracted annually is not accurately known.”

According to the Groundwater Resources Association (GRA), “GRA strongly believes that the requirements outlined in SB 178 will help the State manage its water needs. The monitoring and information required in SB 178 is essential to planning for the State’s water needs and should be taken into consideration now, as funding decisions are considered by the Legislature.”

**ARGUMENTS IN OPPOSITION:** According to Western Growers Association, “Under the bill’s current structure, the Department of Water Resources (Department) is authorized to select which local entity will be

CONTINUED

responsible for local monitoring activities and does not allow for any entity or individual who can meet the technical requirements to submit data. It is our organization's view that no entity should be given control in producing and submitting such data.

“Additionally, the Department already has a widespread system of groundwater monitoring wells that generate data and many areas of the state employ successful local groundwater management strategies. Rather than place a state mandate on local entities, it would be more appropriate for the state to use the current information from its existing wells and use general fund monies to fully fund operation of its existing groundwater monitoring system.

“Fundamentally, the members of Western Growers consider groundwater resources as a local, rather than state, resource. The use of underlying groundwater is a real property right in California and published California case law has determined that groundwater is not a public trust resource. The correlative overlying right to use groundwater is an affair between overlying water users of any given basin and should not become an affair between landowners and the state.”

**ASSEMBLY FLOOR:**

AYES: Arambula, Bass, Beall, Berg, Brownley, Caballero, Carter, Coto, Davis, De La Torre, De Leon, DeSaulnier, Dymally, Eng, Evans, Feuer, Fuentes, Hancock, Hayashi, Hernandez, Huffman, Jones, Karnette, Krekorian, Laird, Leno, Levine, Lieber, Lieu, Ma, Mendoza, Mullin, Parra, Portantino, Price, Ruskin, Salas, Saldana, Solorio, Soto, Swanson, Torrico, Wolk, Nunez

NOES: Adams, Aghazarian, Anderson, Benoit, Berryhill, Blakeslee, Cook, DeVore, Duvall, Emmerson, Fuller, Gaines, Galgiani, Garcia, Garrick, Horton, Houston, Huff, Jeffries, Keene, La Malfa, Maze, Nakanishi, Niello, Plescia, Sharon Runner, Silva, Smyth, Spitzer, Tran, Villines, Walters

NO VOTE RECORDED: Charles Calderon, Nava, Strickland, Vacancy

CTW:cm 9/6/07 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

**SENATE RULES COMMITTEE**

SB 178

Office of Senate Floor Analyses

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VETO

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Bill No: SB 178

Author: Steinberg (D) and Kuehl (D)

Amended: 7/17/07

Vote: 21

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SENATE NATURAL RES. & WATER COMMITTEE: 6-1, 3/27/07

AYES: Steinberg, Margett, Kehoe, Kuehl, Machado, Migden

NOES: Hollingsworth

NO VOTE RECORDED: Cogdill

SENATE APPROPRIATIONS COMMITTEE: 10-6, 5/31/07

AYES: Torlakson, Cedillo, Corbett, Florez, Kuehl, Oropeza, Ridley-Thomas, Simitian, Steinberg, Yee

NOES: Cox, Aanestad, Ashburn, Dutton, Runner, Wyland

NO VOTE RECORDED: Battin

SENATE FLOOR: 24-13, 6/4/07

AYES: Alquist, Cedillo, Corbett, Correa, Florez, Kehoe, Kuehl, Lowenthal, Machado, Margett, Migden, Negrete McLeod, Oropeza, Padilla, Perata, Ridley-Thomas, Romero, Scott, Simitian, Steinberg, Torlakson, Vincent, Wiggins, Yee

NOES: Aanestad, Ackerman, Ashburn, Calderon, Cogdill, Cox, Denham, Harman, Hollingsworth, Maldonado, McClintock, Runner, Wyland

NO VOTE RECORDED: Battin, Ducheny, Dutton

SENATE FLOOR: 23-15, 9/6/07

AYES: Alquist, Calderon, Cedillo, Corbett, Ducheny, Florez, Kehoe, Kuehl, Lowenthal, Margett, Migden, Negrete McLeod, Oropeza, Padilla, Perata, Ridley-Thomas, Romero, Scott, Simitian, Steinberg, Torlakson, Wiggins, Yee

NOES: Aanestad, Ackerman, Ashburn, Battin, Cogdill, Correa, Cox, Denham, Dutton, Harman, Hollingsworth, Maldonado, McClintock, Runner, Wyland

CONTINUED

NO VOTE RECORDED: Machado, Vincent

ASSEMBLY FLOOR: 44-32, 9/5/07 - See last page for vote

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**SUBJECT:** Groundwater

**SOURCE:** Author

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**DIGEST:** This bill establishes a statewide groundwater monitoring program by incorporating existing groundwater management programs and agencies into one comprehensive scheme, with oversight by the Department of Water Resources.

Assembly Amendments eliminate the authorization for the Department of Water Resources to impose a monitoring district and, instead, require the Department of Water Resources to discuss the extent of the monitoring of groundwater elevations in its groundwater bulletin, and clarify that the bill does not change any provision of California law related to groundwater other than as expressly set forth in the bill.

**ANALYSIS:** California does not have any statewide laws governing groundwater supplies.

California does have statewide laws governing groundwater quality. In particular, the Porter Cologne Act, among other things, directs the State Water Resources Control Board (SWRCB) and the regional water quality control boards to promulgate and enforce statewide regulations governing groundwater quality.

California does have laws governing groundwater supplies in some parts of the state. For example, in the counties of Riverside, San Bernardino, Los Angeles and Ventura, current law requires any person who extracts groundwater in excess of 25 acre-feet in any year to file an annual notice of extraction with the SWRCB. This requirement, with certain exceptions, applies to any groundwater extracted after 1955. Moreover, after 1959, failure to file a notice for any calendar within six months after the end of that calendar year is deemed equal to nonuse of the groundwater.

CONTINUED

The Legislature has created 13 special act districts to manage groundwater supplies. Included in these districts are Orange County Water District, Santa Clara Valley Water District, Monterey Peninsula Water Management District and Long Valley Groundwater Management District.

Current law requires the Department of Water Resources (DWR) to report on groundwater conditions. Current law only requires DWR to reports its findings to the Governor and the Legislature no later than January 1, 1980. DWR has updated this report infrequently and only upon appropriation of funds for that purpose.

This bill:

1. Expresses legislative intent to rely on local agencies for groundwater monitoring, while maintaining existing DWR network of monitoring wells.
2. Identifies and prioritizes categories of local agencies that may volunteer to monitor and report groundwater elevations, including:
  - A. Court-appointed watermasters or water management engineers.
  - B. Management agencies.
  - C. Local agencies or counties managing all or part of groundwater basin.
  - D. Integrated regional water management agency.
  - E. Voluntary groundwater monitoring association, as defined.
3. Requires volunteer agencies to submit certain information, including that agency's qualifications to monitor groundwater, to DWR for:
  - A. Evaluation of volunteer qualifications.
  - B. Determination of the appropriate agency to monitor groundwater, either cooperatively or by application of the priorities above.
  - C. Development of monitoring and reporting protocols, deferring to existing programs.

CONTINUED

4. Requires monitoring agencies to report groundwater elevations starting on January 1, 2009.
5. Requires DWR to determine the portions of basins with no monitoring and contact well owners in the area to encourage development of groundwater management/monitoring or integrated regional water management.
6. Authorizes creation of voluntary cooperative groundwater monitoring associations.
7. Requires updating of DWR groundwater investigation, commonly called "Bulletin 118," in years ending in 00 and 05, and the addition of certain information regarding groundwater monitoring.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

The Assembly Appropriations Committee estimates costs of \$350,000 for establishing the groundwater monitoring system and \$2 million every five years to prepare the groundwater report, beginning with the 2010 report.

**SUPPORT:** (Verified 9/5/07)

Groundwater Resources Association  
Sierra Club California

**ARGUMENTS IN SUPPORT:** According to the author's office, "California's don't ask – don't tell" policy for groundwater is not working. While the state has over 500 distinct groundwater basins and subbasins, no one has oversight or management responsibilities over all or even part of any of these groundwater basins or subbasins unless a court has ordered it, the Legislature has established a special district to do it, or a voluntary group of groundwater users chose to do it. For much of the state, this means that no one is looking out for groundwater."

According to the Sierra Club, "Currently, more than nine million Californians rely on groundwater as their sole source of supply. And, while demands on groundwater are growing, information about the condition of the state's groundwater is lacking. The #1 finding of DWR's latest Groundwater Bulletin stated: "Groundwater provides about 30% of the

CONTINUED

State's water supply in an average year, yet in many basins the amount of groundwater extracted annually is not accurately known."

According to the Groundwater Resources Association (GRA), "GRA strongly believes that the requirements outlined in SB 178 will help the State manage its water needs. The monitoring and information required in SB 178 is essential to planning for the State's water needs and should be taken into consideration now, as funding decisions are considered by the Legislature."

**ARGUMENTS IN OPPOSITION:** According to Western Growers Association, "Under the bill's current structure, the Department of Water Resources (Department) is authorized to select which local entity will be responsible for local monitoring activities and does not allow for any entity or individual who can meet the technical requirements to submit data. It is our organization's view that no entity should be given control in producing and submitting such data.

"Additionally, the Department already has a widespread system of groundwater monitoring wells that generate data and many areas of the state employ successful local groundwater management strategies. Rather than place a state mandate on local entities, it would be more appropriate for the state to use the current information from its existing wells and use general fund monies to fully fund operation of its existing groundwater monitoring system.

"Fundamentally, the members of Western Growers consider groundwater resources as a local, rather than state, resource. The use of underlying groundwater is a real property right in California and published California case law has determined that groundwater is not a public trust resource. The correlative overlying right to use groundwater is an affair between overlying water users of any given basin and should not become an affair between landowners and the state."

### **GOVERNOR'S VETO MESSAGE:**

"I am returning Senate Bill 178 without my signature. This bill seeks to establish a statewide groundwater elevation monitoring program and would require the resulting groundwater information to be readily and widely available on or before January 1, 2010. I recognize that this bill is attempting to provide new, useful information about groundwater elevation.

CONTINUED



However, this bill places significant and enormously costly requirements on the Department of Water Resources (Department) to undertake a great deal of work without assuring any guarantees of the receipt of any new information regarding groundwater elevations within any basin in the state. The Department estimates that this bill would result in costs approaching \$40 million in the first five years of effort to fulfill its intent. Without also providing the necessary funding, this bill would force the Department to siphon scarce resources away from its existing core mission programs. The Department will continue its efforts to collect groundwater data and to work with the landowners to ensure appropriate information is available. However this bill would likely not provide sufficient new information to justify the expense.”

**ASSEMBLY FLOOR:**

AYES: Arambula, Bass, Beall, Berg, Brownley, Caballero, Carter, Coto, Davis, De La Torre, De Leon, DeSaulnier, Dymally, Eng, Evans, Feuer, Fuentes, Hancock, Hayashi, Hernandez, Huffman, Jones, Karnette, Krekorian, Laird, Leno, Levine, Lieber, Lieu, Ma, Mendoza, Mullin, Parra, Portantino, Price, Ruskin, Salas, Saldana, Solorio, Soto, Swanson, Torrico, Wolk, Nunez

NOES: Adams, Aghazarian, Anderson, Benoit, Berryhill, Blakeslee, Cook, DeVore, Duvall, Emmerson, Fuller, Gaines, Galgiani, Garcia, Garrick, Horton, Houston, Huff, Jeffries, Keene, La Malfa, Maze, Nakanishi, Niello, Plescia, Sharon Runner, Silva, Smyth, Spitzer, Tran, Villines, Walters

NO VOTE RECORDED: Charles Calderon, Nava, Strickland, Vacancy

CTW:cm 2/8/08 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

BILL ANALYSIS

SENATE COMMITTEE ON NATURAL RESOURCES AND WATER  
Senator Fran Pavley, Chair  
2009-2010 Regular Session

BILL NO: SB 122

HEARING DATE: April 28, 2009

AUTHOR: Pavley

URGENCY: No

VERSION: April 15, 2009

CONSULTANT: Dennis O'Connor

DUAL REFERRAL: No

FISCAL: Yes

SUBJECT: Groundwater.

BACKGROUND AND EXISTING LAW

California does not have any statewide laws governing groundwater supplies. However:

The State Does Have Statewide Laws Governing Groundwater Quality . In particular, the Porter Cologne Act, among other things, directs the State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards to promulgate and enforce statewide regulations governing groundwater quality.

The State Does Have Laws Governing Groundwater Supplies In Some Parts Of The State . For example, in the counties of Riverside, San Bernardino, Los Angeles, and Ventura, current law requires any person who extracts groundwater in excess of 25 acre-feet in any year to file an annual notice of extraction with the SWRCB. This requirement, with certain exceptions, applies to any groundwater extracted after 1955. Moreover, after 1959, failure to file a notice for any calendar year within 6 months after the end of that calendar year is deemed equal to nonuse of the groundwater.

The Legislature Has Created 13 Special Act Districts To Manage Groundwater Supplies . These districts include Orange County Water District, Santa Clara Valley Water District, Monterey Peninsula Water Management District, and Long Valley Groundwater Management District.

Current Law Requires DWR To Study & Report On Groundwater Conditions . Current law only requires the Department of Water

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Resources to report its findings to the Governor and the Legislature no later than January 1, 1980. DWR has updated this report infrequently and only upon appropriation of funds for that purpose.

PROPOSED LAW

This bill would establish a statewide groundwater elevation monitoring program as follows:

Local groundwater management interests would notify DWR as to who would conduct the monitoring of groundwater elevations, what area they would monitor, their qualifications for conducting the monitoring, etc.

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If more than one party seeks to become the monitoring entity for the same portion of a basin or subbasin, DWR would consult with the interested parties to determine who would perform the monitoring functions. In determining which party would conduct the monitoring, DWR would be required to adhere to the following priority:

1. A watermaster or water management engineer who was appointed by a court as a part of an adjudication proceeding.
2. (a) A groundwater management agency with statutory authority to manage groundwater pursuant to its implementing legislation, or  
(b) A water replenishment district.
3. (a) A local agency that is managing all or part of a groundwater basin or subbasin under what is known as an AB 3030 plan (Water Code Section 10750 et seq.), or  
(b) A local agency or county that is managing all or part of a groundwater basin pursuant to any other legally enforceable groundwater management plan with provisions that are substantively similar to AB 3030.
4. A local agency that is managing all or part of a groundwater basin or subbasin pursuant to an integrated regional water management plan that includes a groundwater management component that complies with the requirements of SB 1938 (Water Code Section 10753.7).
5. A county that is not currently managing all or a part of a groundwater basin.
6. A voluntary cooperative groundwater monitoring association formed pursuant to this bill.

Monitoring entities would be required to start monitoring and reporting groundwater elevations by January 1, 2010. The groundwater elevation data would be made readily available to DWR, interested parties, and the public.

By January 1, 2010, DWR would begin to identify the extent of monitoring of groundwater elevations that is being undertaken within each basin and subbasin. If DWR determines that no one is monitoring all or part of a basin or subbasin, DWR would be required to determine if there was a local party willing to conduct the monitoring.

If (a) DWR determines there is no local interest in conducting the monitoring, and (b) DWR determines the existing monitoring network is insufficient to demonstrate seasonal and long term trends in groundwater elevations, and (c) Board of Mining and Geology concurs with that determination; then DWR would be

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authorized to monitor groundwater elevations and to assess a fee to well owners within the DWR monitored area to recover its direct costs.

This bill would also require DWR to update the groundwater report by January 1, 2010, and thereafter in years ending in 5 and 0.

#### ARGUMENTS IN SUPPORT

The author, quoting from PPIC's report "Water for Growth: California's New Frontier," notes that, "Groundwater is the largest single source of new supplies projected by the [urban water management plans], and two-thirds of the increase is projected in areas outside fully managed basins. In some of these areas, conflicts have already begun to emerge, as developers plan to use groundwater to supply new housing projects."

According to the author, "California's 'Don't ask - don't tell' policy for groundwater is not working. While the state has over

500 distinct groundwater basins and subbasins, no one has oversight or management responsibilities over all or even part of any of these groundwater basins or subbasins unless a court has ordered it, the Legislature has established a special district to do it, or a voluntary group of groundwater users chose to do it. For much of the state, this means that no one is looking out for groundwater."

#### ARGUMENTS IN OPPOSITION

A coalition of largely agricultural interests raise a number of concerns.

"We start from the premise that groundwater basins are local, rather than state, resources. Significant local groundwater management is successfully underway in California, and we consider it incumbent on the state to identify what information needs are not being met, and to fund the collection of information to meet those needs out of state resources, rather than to adopt a state requirement on local groundwater basins in order to require local water users, and their special districts and local governments, to shoulder the cost of meeting the state's needs."

"Before the state imposes a new groundwater monitoring and reporting requirement that is locally funded, it is appropriate for the state to fully use the information at its disposal,

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identify what further information it actually needs, and what it needs the information for, and to fully fund the proper operation of its own existing groundwater monitoring network."

"Groundwater is not a public trust resource, under published California case law. Santa Teresa Citizen Action Group v. City of San Jose (2003) 114 Cal.App.4th 689, 709; see also Golden Feather Community Association v. Thermalito Irrigation District (1989) 209 Cal.App.3rd 1277, 1284-1285. The use of underlying groundwater is a real property right in California. The correlative right to use of underlying groundwater is a matter between neighbors on the same basin, and not a matter between landowners and the state. The groundwater basins are local resources of various scope, some of which underlay more than one county, and many of which are solely within individual counties. Local districts, not the State of California, are the proper level of government to regulate the relations between neighbors on the same groundwater basin."

#### COMMENTS

4th Time A Charm? There have been three previous attempts in recent years to establish a statewide groundwater monitoring system. Senator Kuehl carried two bills in the 2005-6 session that, among other things, would have established a statewide groundwater monitoring system, SB 820 & SB 1640. Both bills were vetoed. Last session, Senator Steinberg carried SB 178. It too was vetoed. In his veto statement on SB 178, the Governor wrote "I recognize that this bill is attempting to provide new, useful information about groundwater elevation. However, this bill places significant and enormously costly requirements on the Department of Water Resources (Department) to undertake a great deal of work without assuring any guarantees of the receipt of any new information regarding groundwater elevations within any basin in the state."

This bill is identical to the introduced version of SB 178.

Change Dates. As this bill is identical to the introduced version of SB 178, it includes the same dates and timelines. Should this bill move forward, the author should consider realigning the dates.

Case Law Is Silent On Public Trust . It is often asserted that groundwater is not a public trust resource. In general, the public trust doctrine posits that the sovereign owns all of its navigable waterways and the lands lying beneath them as trustee

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of a public trust for the benefit of the people. However, the Constitution, the statutes, and case law are silent on (1) whether or not groundwater specifically is or is not a public trust resource, as well as (2) under what circumstances groundwater might or might not be considered a public trust resource. One case, Santa Teresa Citizens Action Group v. City

of San Jose, is occasionally cited as substantiating the position that groundwater is not a public trust resource. However, in that case, the California Court of Appeal found that the public trust issue under consideration was not ripe for decision. Therefore, we can conclude nothing based on this case.

SUGGESTED AMENDMENTS: None

SUPPORT

None Received

OPPOSITION

California Bean Shipper Association  
California Cattlemen's Association  
California Chamber of Commerce  
California Farm Bureau Federation  
California Grain and Feed  
California Pear Growers  
California Seed Association  
California Warehouse Association  
California Wheat Growers Association  
Pacific Egg and Poultry Association  
Regional Council of Rural Counties  
Western Growers  
Wine Institute

BILL ANALYSIS

Senate Appropriations Committee Fiscal Summary  
Senator Christine Kehoe, Chair

122 (Pavley)

Hearing Date: 05/04/2009 Amended: 04/15/2009  
Consultant: Brendan McCarthy Policy Vote: NR&W 7-4

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SB 122 (Pavley)  
Page 2

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BILL SUMMARY: SB 122 would require the Department of Water Resources to establish a state-wide groundwater monitoring program. Groundwater monitoring could be performed by local entities or the Department. The bill authorizes the Department to institute a fee on well owners to recover the costs for monitoring.

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Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>Fund</u>
Develop and maintain data systems	\$2,000	\$2,000	\$1,000	General
Department groundwater monitoring	Unknown			Special
Reporting		\$1,000	\$1,000	General
* New special fund. Costs offset by fee revenues.				

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STAFF COMMENTS: This bill meets the criteria for referral to the Suspense file.

Under current law, the state has statutory and regulatory requirements relating to the protection of groundwater quality. Current law also provides for reporting on groundwater extraction in some areas of the state.

SB 122 would establish a statewide groundwater monitoring program within the Department of Water Resources. Under the bill, local groundwater interests could voluntarily agree to monitor groundwater supplies and report their data to the Department. The bill sets out criteria for selecting a monitoring party, if multiple parties wish to perform these duties. The bill requires participating entities to begin reporting groundwater data to the Department by 2010. The data would be publicly accessible. The Department estimates the cost to develop and maintain a computer system to track the monitoring data to be \$2 million for each of the first two years

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SB 122 (Pavley)  
Page 2

and \$1 million per year thereafter. Staff notes that the estimates for the ongoing cost to maintain the database and review the data system seem high given that the data would actually be generated by local monitoring entities and public scrutiny of the data may assist the department with error checking.

If the Department determines that there is no local entity willing or capable of performing the monitoring, the Department may do so. The Department would be authorized to assess a fee on well owners within the area to recover the Department's monitoring costs. The Department's costs to perform monitoring are unknown, but should be fully offset by fee revenues.

The bill would also require the Department to report on groundwater conditions every five years, beginning in 2010. The Department estimates the cost of developing the report to be \$5-6 million over three years. Staff notes that a previous report on this matter was developed in 2003 for \$1 million. In addition, much of the cost of developing the previous report was data gathering and analysis, much of which will be performed by monitoring entities under the bill.

This bill is similar to SB 178 (Steinberg) from the previous session, which was vetoed by the Governor. The veto message was:

I am returning Senate Bill 178 without my signature.

This bill seeks to establish a statewide groundwater elevation monitoring program and would require the resulting groundwater information to be readily and widely available on or before January 1, 2010.

I recognize that this bill is attempting to provide new, useful information about groundwater elevation. However, this bill places significant and enormously costly requirements on the Department of Water Resources (Department) to undertake a great deal of work without assuring any guarantees of the receipt of any new information regarding groundwater elevations within any basin in the state.

The Department estimates that this bill would result in costs approaching \$40 million in the first five years of effort to fulfill its intent. Without also providing the necessary funding, this bill would force the Department to siphon scarce

□

SB 122 (Pavley)  
Page 2

resources away from its existing core mission programs.

The Department will continue its efforts to collect groundwater data and to work with the landowners to ensure appropriate information is available. However this bill would likely not provide sufficient new information to justify the expense.





BILL ANALYSIS

Senate Appropriations Committee Fiscal Summary  
Senator Christine Kehoe, Chair

122 (Pavley)

Hearing Date: 05/28/2009 Amended: 04/15/2009  
Consultant: Brendan McCarthy Policy Vote: NR&W 7-4

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SB 122 (Pavley)  
Page 2

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BILL SUMMARY: SB 122 would require the Department of Water Resources to establish a state-wide groundwater monitoring program. Groundwater monitoring could be performed by local entities or the Department. The bill authorizes the Department to institute a fee on well owners to recover the costs for monitoring.

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Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>Fund</u>
Develop and maintain data systems	\$2,000	\$2,000	\$1,000	General
Department groundwater monitoring	Unknown			Special
Reporting		\$1,000	\$1,000	General

\* New special fund. Costs offset by fee revenues.

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STAFF COMMENTS: Suspense file.

Under current law, the state has statutory and regulatory requirements relating to the protection of groundwater quality. Current law also provides for reporting on groundwater extraction in some areas of the state.

SB 122 would establish a statewide groundwater monitoring program within the Department of Water Resources. Under the bill, local groundwater interests could voluntarily agree to monitor groundwater supplies and report their data to the Department. The bill sets out criteria for selecting a monitoring party, if multiple parties wish to perform these duties. The bill requires participating entities to begin reporting groundwater data to the Department by 2010. The data would be publicly accessible. The Department estimates the cost to develop and maintain a computer system to track the monitoring data to be \$2 million for each of the first two years and \$1 million per year thereafter. Staff notes that the

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SB 122 (Pavley)  
Page 2

estimates for the ongoing cost to maintain the database and review the data system seem high given that the data would actually be generated by local monitoring entities and public scrutiny of the data may assist the department with error checking.

If the Department determines that there is no local entity willing or capable of performing the monitoring, the Department may due so. The Department would be authorized to assess a fee on well owners within the area to recover the Department's monitoring costs. The Department's costs to perform monitoring are unknown, but should be fully offset by fee revenues.

The bill would also require the Department to report on groundwater conditions every five years, beginning in 2010. The Department estimates the cost of developing the report to be \$5-6 million over three years. Staff notes that a previous report on this matter was developed in 2003 for \$1 million. In addition, much of the cost of developing the previous report was data gathering and analysis, much of which will be performed by monitoring entities under the bill.

This bill is similar to SB 178 (Steinberg) from the previous session, which was vetoed by the Governor. The veto message was:

I am returning Senate Bill 178 without my signature.

This bill seeks to establish a statewide groundwater elevation monitoring program and would require the resulting groundwater information to be readily and widely available on or before January 1, 2010.

I recognize that this bill is attempting to provide new, useful information about groundwater elevation. However, this bill places significant and enormously costly requirements on the Department of Water Resources (Department) to undertake a great deal of work without assuring any guarantees of the receipt of any new information regarding groundwater elevations within any basin in the state.

The Department estimates that this bill would result in costs approaching \$40 million in the first five years of effort to fulfill its intent. Without also providing the necessary funding, this bill would force the Department to siphon scarce resources away from its existing core mission programs.

□

SB 122 (Pavley)  
Page 2

The Department will continue its efforts to collect groundwater data and to work with the landowners to ensure appropriate information is available. However this bill would likely not provide sufficient new information to justify the expense.



## **2009 Delta & Water Reform Legislation – October 12**

### **Groundwater Elevation Monitoring**

**SUMMARY:** Establishes statewide groundwater monitoring program. Specifically, the proposed agreement on this program:

- 1) Requires a local groundwater management entity to monitor groundwater elevations (*i.e.*, distance from surface to water):
  - a) Requires entities that volunteer for groundwater monitoring to notify the Department of Water Resources as to its interest, with specified information.
  - b) Requires DWR to consult with interested parties to determine which entity would monitor, based on certain priorities, if more than one entity volunteers for monitoring.
- 2) Requires DWR to work with each monitoring entity to determine appropriate manner of reporting groundwater elevations.
- 3) Groundwater elevation monitoring starts January 1, 2012, and is made publicly available.
- 4) Requires DWR to identify extent of monitoring, by 2012, and determine, in basins without monitoring, if there was a local party willing to conduct the monitoring or interest in developing a groundwater management association or plan.
- 5) Requires DWR to update groundwater report by 2012, and in years ending in 5 and 0.
- 6) Bars groundwater basins that do not comply with groundwater monitoring requirements from receiving state water bond funding.

**EXISTING LAW** allows voluntary, cooperation in management of groundwater basins, but does not provide for any reporting of groundwater elevation. State Water Resources Control Board has authority to protect groundwater quality.

**COMMENTS:** These provisions from the proposed agreement would establish a statewide groundwater monitoring program to ensure that groundwater elevations in all groundwater basins and subbasins be regularly and systematically monitored locally and that the resulting groundwater information be made readily and widely available.

In the past five years, the Legislature has approved three bills to improve the State's access to groundwater information, but the Governor vetoed all three. In intervening years, groundwater problems have grown worse, largely because California is the last western state without any state groundwater management, and California has very little information about the conditions of its groundwater basins. Excessive pumping in the last century has led to substantial subsidence, as much as 55 feet in some areas. Recently, for example, on the west side of the San Joaquin Valley, where allocations of Delta water from the federal Central Valley Project were minimal, farmers responded by pumping more groundwater. DWR then reported that the State Water Project's canal, which passes through the area on its way south, may suffer cracks because of the high level of pumping and resulting slumping of the ground under the canal.

Proposed Agreement: Since the Assembly Water, Parks and Wildlife (WP&W) Committee considered this groundwater monitoring program, as part of SB 68 (Steinberg) on September 11, this portion of the 2009 Delta/water legislative package has changed significantly, although not substantially. While the proposed agreement would require local monitoring, the consequence of a basin refusing to monitor groundwater is the loss of access to any state bond funding. The specific proposals for changes to the September 11 version of this program include:

- Deleting authority for DWR, if no one in a basin volunteers, to monitor groundwater elevations and charge local groundwater users the costs of such monitoring.
- Requiring an entity in each basin to monitor groundwater.
- Conditioning groundwater basin access to state bond funds on compliance with monitoring requirements.
- Clarifies that monitoring program does not authorize any entity to either enter private property without consent or require private property owners to submit groundwater information.

The precise language of how to accomplish these changes has not been completed.

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

**SB X7 1 (Steinberg) – October 23, 2009**  
**2009 Delta & Water Reform Legislation**  
**SUMMARY: Groundwater Elevation Monitoring**

SUMMARY: Establishes statewide groundwater monitoring program. Specifically, the groundwater monitoring part (Sections 69-71) of this bill:

- 1) States legislative intent to have systematic monitoring and public reporting of groundwater elevations (*i.e.*, distance from surface to water) in all groundwater basins and subbasins.
- 2) Provides for local groundwater management entity to monitor groundwater elevations:
  - a) Requires entities that volunteer for groundwater monitoring to notify the Department of Water Resources (DWR) as to its interest, with specified information.
  - b) Requires DWR to consult with interested parties to determine which entity would monitor, based on certain priorities, if more than one entity volunteers for monitoring.
  - c) Requires DWR to identify the extent of groundwater monitoring in each basin.
  - d) Requires DWR to work with well owners in areas that are not monitored to determine interest in groundwater monitoring.
- 3) Requires county where groundwater is not monitored to either facilitate/form an a plan or association or directly monitor groundwater elevation.
- 4) Requires DWR to work with each monitoring entity to determine appropriate manner of reporting groundwater elevations.
- 5) Requires start of groundwater elevation monitoring on January 1, 2012, and makes such information publicly available through specified means.
- 6) Requires DWR to identify extent of monitoring, by 2012, and determine, in basins without monitoring, if there was a local party willing to conduct the monitoring or interest in developing a groundwater management association or plan.
- 7) Requires DWR to update groundwater report by 2012, and in years ending in 5 and 0.
- 8) Bars counties and specified agencies overlying groundwater basins that do not comply with groundwater monitoring requirements from receiving state water grants or loans.

EXISTING LAW allows voluntary, cooperation in management of groundwater basins, but does not provide for any reporting of groundwater elevation. State Water Resources Control Board has authority to protect groundwater quality.



COMMENTS: These provisions from SB X7 1 would establish a statewide groundwater monitoring program to ensure that groundwater elevations in all groundwater basins and subbasins be regularly and systematically monitored locally and that the resulting groundwater information be made readily and widely available.

In the past five years, the Legislature has approved three bills to improve the State's access to groundwater information, but the Governor vetoed all three. In intervening years, groundwater problems have grown worse, in part because California is the last western state without any state groundwater management. California has very little information about the conditions of its groundwater basins. Excessive pumping in the last century has led to substantial subsidence, as much as 55 feet in some areas. Recently, for example, on the west side of the San Joaquin Valley, where allocations of Delta water from the federal Central Valley Project were minimal, farmers responded by pumping more groundwater. DWR then reported that the State Water Project's canal, which passes through the area on its way south, may suffer cracks because of the high level of pumping and resulting slumping of the ground under the canal.

Proposed Agreement: Since the Assembly Water, Parks and Wildlife (WP&W) Committee considered this groundwater monitoring program, as part of SB 68 (the regular session version of this bill) on September 11, this portion of the 2009 Delta/water legislative package has changed significantly, although not substantially. The most significant change was the loss of DWR as a backstop for groundwater monitoring in basins where no one wants to do the monitoring. Instead, the county overlying the basin is required to either facilitate others monitoring the basin or do the monitoring itself. The consequence of a county failing to complete the monitoring is loss of state water grants and loans to the county and to all the agencies identified as potential volunteer monitoring entities.

This bill also allows for DWR funding from unallocated bond revenues and clarifies that this new groundwater monitoring program does not provide "any new or additional authority to any entity" to:

- Enter private property without the consent of the property owner.
- Require a private property owner to submit groundwater monitoring information.

This clarification does not affect those agencies that already have legal authority to take these actions.

Summary Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

**SENATE RULES COMMITTEE**

**SB 6XXXXXXX**

Office of Senate Floor Analyses

1020 N Street, Suite 524

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**THIRD READING**

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Bill No: SB 6XXXXXXX

Author: Steinberg (D)

Amended: 11/2/09

Vote: 21

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**SUBJECT:** Groundwater monitoring program

**SOURCE:** Author

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**DIGEST:** This bill, in conjunction with SBX7 1, SBX7 5, and SBX7 7, is the culmination of months of negotiation to create a comprehensive water package. Specifically, this bill establishes a statewide groundwater monitoring program. This bill requires the Department of Water Resources (DWR) to work cooperatively with local groundwater management entities to determine who would conduct the groundwater monitoring. If no entity volunteered to do the monitoring, the county would be required to conduct the monitoring.

Senate Floor Amendments of 11/2/09 specify that the provision concerning the DWR to conduct an investigation of the state's groundwater basins does not apply to a county or entity described in Section 10927 of the bill that assumed responsibility for monitoring and reporting groundwater elevations prior to the effective date of this provision.

**ANALYSIS:** Existing law authorizes a local agency whose service area includes a groundwater basin that is not subject to groundwater management to adopt and implement a groundwater management plan pursuant to certain provisions of law. Existing law requires a groundwater management plan to include certain components to qualify as a plan for the purposes of those

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provisions, including a provision that establishes funding requirements for the construction of certain groundwater projects.

Existing law requires DWR to conduct an investigation of the state's groundwater basins and to report its findings to the Governor and the Legislature not later than January 1, 1980.

This bill establishes statewide groundwater monitoring program. Specifically, this bill:

1. States legislative intent to have systematic monitoring and public reporting of groundwater elevations (i.e., distance from surface to water) in all groundwater basins and subbasins.
2. Provides for local groundwater management entity to monitor groundwater elevations:
  - A. Requires entities that volunteer for groundwater monitoring to notify DWR as to its interest, with specified information.
  - B. Requires DWR to consult with interested parties to determine which entity would monitor, based on certain priorities, if more than one entity volunteers for monitoring.
  - C. Requires DWR to identify the extent of groundwater monitoring in each basin.
  - D. Requires DWR to work with well owners in areas that are not monitored to determine interest in groundwater monitoring.
3. Potential monitoring entities include:
  - A. A watermaster appointed by a court.
  - B. A groundwater management agency with statutory authority to manage.
  - C. A water replenishment.
  - D. A local agency that is managing all or part of a groundwater basin or subbasin pursuant what are known as AB 3030 plans.

- E. A local agency that is managing all or part of a groundwater basin or subbasin pursuant to an integrated regional water management plan that includes a groundwater management component.
  - F. A county.
  - G. A voluntary cooperative groundwater monitoring association.
- 4. Requires DWR to work with each monitoring entity to determine appropriate manner of reporting groundwater elevations.
  - 5. Requires start of groundwater elevation monitoring on January 1, 2012, and makes such information publicly available through specified means.
  - 6. Requires DWR to identify extent of monitoring, by 2012, and determine, in basins without monitoring, if there was a local party willing to conduct the monitoring or interest in developing a groundwater management association or plan.
  - 7. If DWR determined that all or part of a groundwater basin or subbasin was not being monitored, then DWR shall:
    - A. Identify any existing monitoring wells that overlie the basin or subbasin that are owned or operated by the department or any other state or federal agency.
    - B. Determine whether the identified monitoring wells provide sufficient information to demonstrate seasonal and long-term trends in groundwater elevations.
    - C. If the DWR should determine that the identified monitoring wells provide sufficient information, DWR would not perform groundwater monitoring functions
    - D. If the DWR should determine that the identified monitoring wells insufficient information to demonstrate seasonal and long-term trends in groundwater elevations, and the State Mining and Geology Board concurs with that determination, the department would perform groundwater monitoring functions

8. Upon determining that DWR is required to perform groundwater monitoring functions:
  - A. DWR shall notify the affected parties that it is forming the groundwater monitoring district.
  - B. DWR shall impose a charge on each well owner for its share of the costs of DWR to perform the groundwater monitoring required under this part.
9. For purposes of this bill, neither any of the entities identified in #3 above, nor DWR, shall have the authority to do either of the following:
  - A. To enter private property without the consent of the property owner.
  - B. To require a private property owner to submit groundwater monitoring information to the entity.
10. Require DWR to update groundwater report by 2012, and in years ending in 5 and 0.
11. Bars counties and specified agencies overlying groundwater basins that do not comply with groundwater monitoring requirements from receiving state water grants or loans.

Comments

These provisions establish a statewide groundwater monitoring program to ensure that groundwater elevations in all groundwater basins and subbasins be regularly and systematically monitored locally and that the resulting groundwater information be made readily and widely available.

In the past five years, the Legislature has approved three bills to improve the state's access to groundwater information, but the Governor vetoed all three. In intervening years, groundwater problems have grown worse, in part because California is the last western state without any state groundwater management. California has very little information about the conditions of its groundwater basins. Excessive pumping in the last century has led to substantial subsidence, as much as 55 feet in some areas. Recently, for example, on the west side of the San Joaquin Valley, where allocations of Delta water from the federal Central Valley Project were minimal, farmers

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responded by pumping more groundwater. DWR then reported that the State Water Project's canal, which passes through the area on its way south, may suffer cracks because of the high level of pumping and resulting slumping of the ground under the canal.

This bill takes effect only if SB 1, SB 5, and SB 7 of the 2009-10 Seventh Extraordinary Session of the Legislature are enacted and become effective.

### A History of Water in California

Water, the lifeblood of the state and its most valuable natural resource, has played a major role in helping shape California's economic growth and landscape since statehood. It has been a very controversial and complex subject and has even led to water wars. In the past, the issue of water related to the problem of transfer because 80 percent of the water is in Northern California with 60 percent of the population in the south. Now the issue facing California policymakers is one of water storage -- both surface and groundwater. In the early years of statehood, miners built miles of flows and ditches in order to divert water to sluice gold out. Miners washed entire mountainsides into rivers and streams. The silt deposited in the riverbeds of the Central Valley increased flood risk. As a remedy to rising riverbeds, levees were built very close to the channels to keep water velocity high and scour away the sediment.

Most of the miners turned into farmers and these farmers began using aquifers to irrigate their farmlands. Various investigations, starting in 1873, were done to survey the Central Valley's irrigation needs and development of the Sierras watershed. In 1887, the Wright Act was enacted declaring irrigation a public use and providing for the creation of public irrigation districts with authority to supersede riparian water rights by invoking the right of eminent domain.

In the early 20th century, the metropolitan areas of Los Angeles and San Francisco started experiencing inadequate water supplies due to increased population. In 1908, Los Angeles started construction of the Owens Valley Aqueduct which diverted water from the Owens Valley located in Inyo County. It was finished in 1913. However, this led to what has become known as the Owens Valley Water War. In retaliation for their crops dying, farmers in Owens Valley, in the 1920s, dynamited the aqueduct and its dams. When it became apparent that Southern California needed additional

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water in the 1930s, the Colorado aqueduct, along with the All-American and Coachella Canals were built and became operational in 1941.

In San Francisco, the growth of its population made them look at places from where to divert water. Between 1901-1902, the City engineers recommended that water be diverted from Hetch-Hetchy Canyon in Yosemite National Park. The United States Department of the Interior rejected a permit to the City for development. In 1906, the great San Francisco earthquake occurred rupturing the City's water supply lines making it difficult to put out the resulting fires. A Bay Cities water company and utility company offered to sell its water rights to the City on the American and Cosumnes Rivers near Lake Tahoe but it was learned the City's officials were to receive kickbacks from the company. In 1908, the United States Department of the Interior reversed its permit decision and granted San Francisco the right to develop Hetch-Hetchy. In 1909, when President Taft took office, the permit was rescinded. However, the United States Congress, in 1913, passed the Raker Act granting the City the Hetch-Hetchy Canyon and the first water did not reach San Francisco until 1934. At the present time, there is a movement to have Congress restore the Hetch Hetchy Canyon as it was before the diversion of water took place.

In 1928, the voters passed ACA 27 (Crittenden), at the general election, which declared that the general welfare requires water resources be beneficially used, and waste or unreasonable use or unreasonable method of use be prevented, and required conservation for the public welfare. It preserved to the riparian owner all the water to which he or she may be entitled for beneficial use by reasonable method, but required that the unwarranted and needless waste of water shall be prevented. In 1931, the Legislature passed the County of Origin law which prohibited the draining of one area's water supply for the sake of another.

In the 1930s, major developments were taken to provide for the transfer of northern water to the south. The Legislature passed, in 1933, the Central Valley Act authorizing a \$170 million bond which was approved by the voters in a special December 19, 1933 election. However, due to the Depression, the bonds were unmarketable and the federal government had to take over the project as a public works project and construction started in 1935.

In the 1940s, outbreaks of waterborne diseases, degradation of fishing and recreational water and war time industrial development and population

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growth prompted water pollution problems. In 1949, in response to these problems the Legislature passed the Dickey Water Pollution Act which created the State Water Pollution Control Board to set statewide policy for pollution control and coordinating the actions of those state agencies and political subdivisions of the state in controlling water pollution. It established nine regional water pollution control boards located in each of the major California watersheds to oversee and enforce the state's pollution abatement program. The state board was renamed the State Water Quality Control Board. In 1969, the Legislature enacted the Porter-Cologne Water Quality Control Act which became recognized as one of the nation's toughest pieces of anti-pollution legislation and was influential in the passage, on the federal level, of the Federal Water Pollution Control Act Amendments of 1972 known as the Clean Water Act. The State Water Resources Control Board is now the entity which is concerned with water pollution.

In 1956, the Legislature, at a special session called by Governor Goodwin J. Knight, created the Department of Water Resources to develop a state water plan. In 1957, the plan was completed which included a system of reservoirs, aqueducts, pumping and power plants to transport water from the north to the south. In 1959, the Legislature enacted, and Governor Pat Brown signed, the Burns-Porter Act providing initial funding of \$1.75 billion in general obligation bonds, and placed it on the 1960 ballot. Compromises were reached in order for the Burns-Porter Act to become law. The north counties were assured that water would be available for future projects and \$130 million of the \$1.75 billion was earmarked for these projects. The County of Origin and Watershed of Origin Acts were reaffirmed by Burns-Porter. Delta water users were ensured their water uses and that good water quality for all purposes were available with the passage of the Delta Protection Act. For Southern California, the Burns-Porter Act required that the state not impose contracts for the sale and delivery of project water during the lifetime of the bonds. The voters approved the California Water Resources Development Bond (Burns-Porter) Act by a 51.5 percent to 48.5 percent margin at the 1960 General Election. The California Water Project now includes the following facilities and projects: Upper Feather River Project, Oroville Reservoir, North Bay Aqueduct, South Bay Aqueduct, San Luis Reservoir, Pacheco Pass Aqueduct, San Joaquin Valley-Southern California Aqueduct, and the Coastal Aqueduct. The next issue of water was the building of a Peripheral Canal as part of the State Water Project. Construction of such a Canal has been proposed, since 1965, to move Sacramento River water through the eastern delta to the delta

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pumping plant. The Canal is to permit the release of high quality water into the main channels of the delta. These releases are expected to improve water quality in the channels, protect fisheries, flush lower quality waters from the delta and reduce the intrusion of sea water from the San Francisco Bay into the delta. The Canal would permit additional high quality water to be pumped from the delta to meet the state's contract commitments to water users under the State Water Project.

In 1980, the Legislature enacted SB 200 (Ayala) to expand the State Water Project, to specifically authorize construction of the Peripheral Canal, and to establish policy for operating conditions in the delta. Constitutional initiatives qualified for the ballot by environmentalists requiring constitutional guarantees against placing claims on the north coast rivers and providing strict guarantees for the delta and San Francisco water quality. The voters passed Proposition 8 tying approval of the Peripheral Canal to these environmental restrictions by 53.3 percent to 46.2 percent. In late 1982, a referendum qualified for the June 1982 ballot to overturn SB 200, which passed 62 percent to 38 percent.

In 1988, SB 34 (Boatwright) was enacted providing for the Delta Flood Protection Fund creating a delta levee maintenance program pursuant to which a local agency may request reimbursement for costs incurred in connection with the maintenance or improvement of project or non-project levees in the Sacramento-San Joaquin Delta. It provided \$120 million over 10 years. In 1992, the Johnston-Baker-Andal-Boatwright Delta Protection Act became law mandating the designation of primary and secondary zones within the legal definition of the delta, creating a Delta Protection Commission, and completion of a land use and resource management plan for the primary zone. In 2000, the CalFed Bay-Delta Program published a plan to fix the delta water problems and address its major water challenges over the next 30 years. DWR assumed a leading role in the implementation of the CalFed plan, including programs related to water storage, delta conveyance, delta levee system integrity, watershed management, water use efficiency, and water quality.

Hurricane Katrina, in 2005, prompted the Legislature and Governor to come up with a compromise to fix various infrastructure problems in the state--water being one. The Legislature and the Governor enacted AB 140, the Preparedness and Flood Prevention Disaster Bond Act of 2004, which became Proposition 1E on the 2006 General Election ballot and the voters passed. The bond act provided \$4.09 billion in general obligation bonds for

the rebuilding and repairs of California's most vulnerable flood control structures to protect homes and prevent loss of life from flood-related disasters, including levee failure, flash floods, and mudslides and to protect California's drinking water supply system by rebuilding levees that are vulnerable to catastrophes and storms.

On September 11, 2007, the Governor called a special session to protect and restore the Sacramento-San Joaquin Delta while also improving the reliability and quality of water supplies from that estuary and to address the short-term and long-term improvement of California's water management system.

The Governor proposed a \$9 billion water infrastructure plan including \$600 million from the bond measures passed by the voters in 2006 to relieve pressure on deltas from environmental concerns and to respond to the federal court ruling that will reduce water deliveries to Southern California; \$5.6 billion in water storage (\$5.1 billion for surface and \$500,000 for groundwater); \$1.9 billion for delta restoration and water supply reliability; \$1 billion in grants for conservation and regional water projects; and \$500 million in grants for specified watersheds throughout the state. The Governor also called for a new Peripheral Canal: SB 3XX and 4XX (Cogdill) and AB 4X (Villines). All these measures died when the extraordinary session adjourned.

Senator Perata introduced SB 2XX allowing a \$6.5 billion general obligation bond for water supply, reliability, delta sustainability, conservation and pollution cleanup, protection against invasive species, groundwater protection, water quality, and water recycling. SB 2XX was voted on by the Senate and was defeated on a party line vote.

The major difference between the two water plans was that the Governor provided for the building of surface storage facilities (dams) while SB 2XX included \$2 billion for regional grants to improve water supply reliability but did not exclude dams as long as that is the fastest, cheapest and most efficient way to increase water supply. SB 2XX would have emphasized regional decision making rather than investing control in DWR. SB 2XX would have set up a competitive process in each region to fund the projects that provide the most water at the lowest cost.

On August 31, 2007, Federal Court Judge Oliver Wagner ruled to restrict water deliveries from the Sacramento-San Joaquin Delta to the Bay Area,

Central Valley and Southern California due to the endangerment of the endangered species delta smelt which has made the water supply issue more complex.

In the 2007 Regular Session, the Legislature enacted and the Governor did sign into law legislation which enhances flood protection in California: SB 5 (Machado) requiring the Department of Water Resources and the Central Valley Flood Protection Board to prepare and adopt a Central Valley Flood Protection Plan by 2012, and establishing flood protection requirements for local land-use decisions consistent with the Central Valley Protection Plan; SB 17 (Florez) reforming and removing the Reclamation Board to the Central Valley Flood Protection Board and improving proficiency, and requiring development of the State Plan of Flood Control for the Central Valley; AB 70 (Jones) providing, generally, that a city or county may be required to contribute a fair and reasonable share of the increased flood liability caused by its unreasonable approval of the developments following the failure of a state flood control project; AB 156 (Laird) enhancing information and planning related to Central Valley flood protection and the improvement of the system by the Department of Water Resources and local agencies; AB 162 (Wolk) requiring cities and counties to address flood-related matters in the land use, conservation, safety , and housing elements of their general plans; AB 5 (Wolk) making clarifying and technical changes to the preceding bills.

The Governor and Senator Dianne Feinstein in July of 2009 reached an agreement to propose a \$9.3 billion water bond.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

**SUPPORT:** (Unable to verify at time of writing)

Unknown, because of the many changes in the compromise that have been reached.

**OPPOSITION:** (Unable to verify at time of writing)

Unknown, because of the many changes in the compromise that have been reached.

DLW:mw 11/2/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

**SENATE RULES COMMITTEE**

**SB 6XXXXXXX**

Office of Senate Floor Analyses

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**THIRD READING**

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Bill No: SB 6XXXXXXX

Author: Steinberg (D)

Amended: 11/2/09

Vote: 21

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**SENATE FLOOR:** 19-16, 11/03/09

**AYES:** Alquist, Calderon, Cedillo, Ducheny, Florez, Kehoe, Leno, Liu,  
Lowenthal, Maldonado, Negrete McLeod, Padilla, Pavley, Price,  
Romero, Simitian, Steinberg, Wiggins, Wright

**NOES:** Ashburn, Benoit, Cogdill, Corbett, Cox, Denham, DeSaulnier,  
Dutton, Harman, Hollingsworth, Huff, Strickland, Walters, Wolk,  
Wyland, Yee

**NO VOTE RECORDED:** Aanestad, Correa, Hancock, Oropeza, Runner

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**SUBJECT:** Groundwater monitoring program

**SOURCE:** Author

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**DIGEST:** This bill, in conjunction with SBX7 1, SBX7 5, and SBX7 7, is the culmination of months of negotiation to create a comprehensive water package. Specifically, this bill establishes a statewide groundwater monitoring program. This bill requires the Department of Water Resources (DWR) to work cooperatively with local groundwater management entities to determine who would conduct the groundwater monitoring. If no entity volunteered to do the monitoring, the county would be required to conduct the monitoring.

Senate Floor Amendments of 11/2/09 specify that the provision concerning the DWR to conduct an investigation of the state's groundwater basins does not apply to a county or entity described in Section 10927 of the bill that

CONTINUED

assumed responsibility for monitoring and reporting groundwater elevations prior to the effective date of this provision.

**ANALYSIS:** Existing law authorizes a local agency whose service area includes a groundwater basin that is not subject to groundwater management to adopt and implement a groundwater management plan pursuant to certain provisions of law. Existing law requires a groundwater management plan to include certain components to qualify as a plan for the purposes of those provisions, including a provision that establishes funding requirements for the construction of certain groundwater projects.

Existing law requires DWR to conduct an investigation of the state's groundwater basins and to report its findings to the Governor and the Legislature not later than January 1, 1980.

This bill establishes statewide groundwater monitoring program. Specifically, this bill:

1. States legislative intent to have systematic monitoring and public reporting of groundwater elevations (i.e., distance from surface to water) in all groundwater basins and subbasins.
2. Provides for local groundwater management entity to monitor groundwater elevations:
  - A. Requires entities that volunteer for groundwater monitoring to notify DWR as to its interest, with specified information.
  - B. Requires DWR to consult with interested parties to determine which entity would monitor, based on certain priorities, if more than one entity volunteers for monitoring.
  - C. Requires DWR to identify the extent of groundwater monitoring in each basin.
  - D. Requires DWR to work with well owners in areas that are not monitored to determine interest in groundwater monitoring.
3. Potential monitoring entities include:
  - A. A watermaster appointed by a court.



- B. A groundwater management agency with statutory authority to manage.
  - C. A water replenishment.
  - D. A local agency that is managing all or part of a groundwater basin or subbasin pursuant what are known as AB 3030 plans.
  - E. A local agency that is managing all or part of a groundwater basin or subbasin pursuant to an integrated regional water management plan that includes a groundwater management component.
  - F. A county.
  - G. A voluntary cooperative groundwater monitoring association.
- 4. Requires DWR to work with each monitoring entity to determine appropriate manner of reporting groundwater elevations.
  - 5. Requires start of groundwater elevation monitoring on January 1, 2012, and makes such information publicly available through specified means.
  - 6. Requires DWR to identify extent of monitoring, by 2012, and determine, in basins without monitoring, if there was a local party willing to conduct the monitoring or interest in developing a groundwater management association or plan.
  - 7. If DWR determined that all or part of a groundwater basin or subbasin was not being monitored, then DWR shall:
    - A. Identify any existing monitoring wells that overlie the basin or subbasin that are owned or operated by the department or any other state or federal agency.
    - B. Determine whether the identified monitoring wells provide sufficient information to demonstrate seasonal and long-term trends in groundwater elevations.

- C. If the DWR should determine that the identified monitoring wells provide sufficient information, DWR would not perform groundwater monitoring functions
  - D. If the DWR should determine that the identified monitoring wells insufficient information to demonstrate seasonal and long-term trends in groundwater elevations, and the State Mining and Geology Board concurs with that determination, the department would perform groundwater monitoring functions
8. Upon determining that DWR is required to perform groundwater monitoring functions:
- A. DWR shall notify the affected parties that it is forming the groundwater monitoring district.
  - B. DWR shall impose a charge on each well owner for its share of the costs of DWR to perform the groundwater monitoring required under this part.
9. For purposes of this bill, neither any of the entities identified in #3 above, nor DWR, shall have the authority to do either of the following:
- A. To enter private property without the consent of the property owner.
  - B. To require a private property owner to submit groundwater monitoring information to the entity.
10. Require DWR to update groundwater report by 2012, and in years ending in 5 and 0.
11. Bars counties and specified agencies overlying groundwater basins that do not comply with groundwater monitoring requirements from receiving state water grants or loans.

Comments

These provisions establish a statewide groundwater monitoring program to ensure that groundwater elevations in all groundwater basins and subbasins be regularly and systematically monitored locally and that the resulting groundwater information be made readily and widely available.

CONTINUED

In the past five years, the Legislature has approved three bills to improve the state's access to groundwater information, but the Governor vetoed all three. In intervening years, groundwater problems have grown worse, in part because California is the last western state without any state groundwater management. California has very little information about the conditions of its groundwater basins. Excessive pumping in the last century has led to substantial subsidence, as much as 55 feet in some areas. Recently, for example, on the west side of the San Joaquin Valley, where allocations of Delta water from the federal Central Valley Project were minimal, farmers responded by pumping more groundwater. DWR then reported that the State Water Project's canal, which passes through the area on its way south, may suffer cracks because of the high level of pumping and resulting slumping of the ground under the canal.

This bill takes effect only if SB 1, SB 5, and SB 7 of the 2009-10 Seventh Extraordinary Session of the Legislature are enacted and become effective.

### A History of Water in California

Water, the lifeblood of the state and its most valuable natural resource, has played a major role in helping shape California's economic growth and landscape since statehood. It has been a very controversial and complex subject and has even led to water wars. In the past, the issue of water related to the problem of transfer because 80 percent of the water is in Northern California with 60 percent of the population in the south. Now the issue facing California policymakers is one of water storage -- both surface and groundwater. In the early years of statehood, miners built miles of flows and ditches in order to divert water to sluice gold out. Miners washed entire mountainsides into rivers and streams. The silt deposited in the riverbeds of the Central Valley increased flood risk. As a remedy to rising riverbeds, levees were built very close to the channels to keep water velocity high and scour away the sediment.

Most of the miners turned into farmers and these farmers began using aquifers to irrigate their farmlands. Various investigations, starting in 1873, were done to survey the Central Valley's irrigation needs and development of the Sierras watershed. In 1887, the Wright Act was enacted declaring irrigation a public use and providing for the creation of public irrigation districts with authority to supersede riparian water rights by invoking the right of eminent domain.

CONTINUED

In the early 20th century, the metropolitan areas of Los Angeles and San Francisco started experiencing inadequate water supplies due to increased population. In 1908, Los Angeles started construction of the Owens Valley Aqueduct which diverted water from the Owens Valley located in Inyo County. It was finished in 1913. However, this led to what has become known as the Owens Valley Water War. In retaliation for their crops dying, farmers in Owens Valley, in the 1920s, dynamited the aqueduct and its dams. When it became apparent that Southern California needed additional water in the 1930s, the Colorado aqueduct, along with the All-American and Coachella Canals were built and became operational in 1941.

In San Francisco, the growth of its population made them look at places from where to divert water. Between 1901-1902, the City engineers recommended that water be diverted from Hetch-Hetchy Canyon in Yosemite National Park. The United States Department of the Interior rejected a permit to the City for development. In 1906, the great San Francisco earthquake occurred rupturing the City's water supply lines making it difficult to put out the resulting fires. A Bay Cities water company and utility company offered to sell its water rights to the City on the American and Cosumnes Rivers near Lake Tahoe but it was learned the City's officials were to receive kickbacks from the company. In 1908, the United States Department of the Interior reversed its permit decision and granted San Francisco the right to develop Hetch-Hetchy. In 1909, when President Taft took office, the permit was rescinded. However, the United States Congress, in 1913, passed the Raker Act granting the City the Hetch-Hetchy Canyon and the first water did not reach San Francisco until 1934. At the present time, there is a movement to have Congress restore the Hetch Hetchy Canyon as it was before the diversion of water took place.

In 1928, the voters passed ACA 27 (Crittenden), at the general election, which declared that the general welfare requires water resources be beneficially used, and waste or unreasonable use or unreasonable method of use be prevented, and required conservation for the public welfare. It preserved to the riparian owner all the water to which he or she may be entitled for beneficial use by reasonable method, but required that the unwarranted and needless waste of water shall be prevented. In 1931, the Legislature passed the County of Origin law which prohibited the draining of one area's water supply for the sake of another.

In the 1930s, major developments were taken to provide for the transfer of northern water to the south. The Legislature passed, in 1933, the Central Valley Act authorizing a \$170 million bond which was approved by the voters in a special December 19, 1933 election. However, due to the Depression, the bonds were unmarketable and the federal government had to take over the project as a public works project and construction started in 1935.

In the 1940s, outbreaks of waterborne diseases, degradation of fishing and recreational water and war time industrial development and population growth prompted water pollution problems. In 1949, in response to these problems the Legislature passed the Dickey Water Pollution Act which created the State Water Pollution Control Board to set statewide policy for pollution control and coordinating the actions of those state agencies and political subdivisions of the state in controlling water pollution. It established nine regional water pollution control boards located in each of the major California watersheds to oversee and enforce the state's pollution abatement program. The state board was renamed the State Water Quality Control Board. In 1969, the Legislature enacted the Porter-Cologne Water Quality Control Act which became recognized as one of the nation's toughest pieces of anti-pollution legislation and was influential in the passage, on the federal level, of the Federal Water Pollution Control Act Amendments of 1972 known as the Clean Water Act. The State Water Resources Control Board is now the entity which is concerned with water pollution.

In 1956, the Legislature, at a special session called by Governor Goodwin J. Knight, created the Department of Water Resources to develop a state water plan. In 1957, the plan was completed which included a system of reservoirs, aqueducts, pumping and power plants to transport water from the north to the south. In 1959, the Legislature enacted, and Governor Pat Brown signed, the Burns-Porter Act providing initial funding of \$1.75 billion in general obligation bonds, and placed it on the 1960 ballot. Compromises were reached in order for the Burns-Porter Act to become law. The north counties were assured that water would be available for future projects and \$130 million of the \$1.75 billion was earmarked for these projects. The County of Origin and Watershed of Origin Acts were reaffirmed by Burns-Porter. Delta water users were ensured their water uses and that good water quality for all purposes were available with the passage of the Delta Protection Act. For Southern California, the Burns-Porter Act required that the state not impose contracts for the sale and delivery of

project water during the lifetime of the bonds. The voters approved the California Water Resources Development Bond (Burns-Porter) Act by a 51.5 percent to 48.5 percent margin at the 1960 General Election. The California Water Project now includes the following facilities and projects: Upper Feather River Project, Oroville Reservoir, North Bay Aqueduct, South Bay Aqueduct, San Luis Reservoir, Pacheco Pass Aqueduct, San Joaquin Valley-Southern California Aqueduct, and the Coastal Aqueduct. The next issue of water was the building of a Peripheral Canal as part of the State Water Project. Construction of such a Canal has been proposed, since 1965, to move Sacramento River water through the eastern delta to the delta pumping plant. The Canal is to permit the release of high quality water into the main channels of the delta. These releases are expected to improve water quality in the channels, protect fisheries, flush lower quality waters from the delta and reduce the intrusion of sea water from the San Francisco Bay into the delta. The Canal would permit additional high quality water to be pumped from the delta to meet the state's contract commitments to water users under the State Water Project.

In 1980, the Legislature enacted SB 200 (Ayala) to expand the State Water Project, to specifically authorize construction of the Peripheral Canal, and to establish policy for operating conditions in the delta. Constitutional initiatives qualified for the ballot by environmentalists requiring constitutional guarantees against placing claims on the north coast rivers and providing strict guarantees for the delta and San Francisco water quality. The voters passed Proposition 8 tying approval of the Peripheral Canal to these environmental restrictions by 53.3 percent to 46.2 percent. In late 1982, a referendum qualified for the June 1982 ballot to overturn SB 200, which passed 62 percent to 38 percent.

In 1988, SB 34 (Boatwright) was enacted providing for the Delta Flood Protection Fund creating a delta levee maintenance program pursuant to which a local agency may request reimbursement for costs incurred in connection with the maintenance or improvement of project or non-project levees in the Sacramento-San Joaquin Delta. It provided \$120 million over 10 years. In 1992, the Johnston-Baker-Andal-Boatwright Delta Protection Act became law mandating the designation of primary and secondary zones within the legal definition of the delta, creating a Delta Protection Commission, and completion of a land use and resource management plan for the primary zone. In 2000, the CalFed Bay-Delta Program published a plan to fix the delta water problems and address its major water challenges over the next 30 years. DWR assumed a leading role in the implementation



of the CalFed plan, including programs related to water storage, delta conveyance, delta levee system integrity, watershed management, water use efficiency, and water quality.

Hurricane Katrina, in 2005, prompted the Legislature and Governor to come up with a compromise to fix various infrastructure problems in the state-- water being one. The Legislature and the Governor enacted AB 140, the Preparedness and Flood Prevention Disaster Bond Act of 2004, which became Proposition 1E on the 2006 General Election ballot and the voters passed. The bond act provided \$4.09 billion in general obligation bonds for the rebuilding and repairs of California's most vulnerable flood control structures to protect homes and prevent loss of life from flood-related disasters, including levee failure, flash floods, and mudslides and to protect California's drinking water supply system by rebuilding levees that are vulnerable to catastrophes and storms.

On September 11, 2007, the Governor called a special session to protect and restore the Sacramento-San Joaquin Delta while also improving the reliability and quality of water supplies from that estuary and to address the short-term and long-term improvement of California's water management system.

The Governor proposed a \$9 billion water infrastructure plan including \$600 million from the bond measures passed by the voters in 2006 to relieve pressure on deltas from environmental concerns and to respond to the federal court ruling that will reduce water deliveries to Southern California; \$5.6 billion in water storage (\$5.1 billion for surface and \$500,000 for groundwater); \$1.9 billion for delta restoration and water supply reliability; \$1 billion in grants for conservation and regional water projects; and \$500 million in grants for specified watersheds throughout the state. The Governor also called for a new Peripheral Canal: SB 3XX and 4XX (Cogdill) and AB 4X (Villines). All these measures died when the extraordinary session adjourned.

Senator Perata introduced SB 2XX allowing a \$6.5 billion general obligation bond for water supply, reliability, delta sustainability, conservation and pollution cleanup, protection against invasive species, groundwater protection, water quality, and water recycling. SB 2XX was voted on by the Senate and was defeated on a party line vote.



The major difference between the two water plans was that the Governor provided for the building of surface storage facilities (dams) while SB 2XX included \$2 billion for regional grants to improve water supply reliability but did not exclude dams as long as that is the fastest, cheapest and most efficient way to increase water supply. SB 2XX would have emphasized regional decision making rather than investing control in DWR. SB 2XX would have set up a competitive process in each region to fund the projects that provide the most water at the lowest cost.

On August 31, 2007, Federal Court Judge Oliver Wagner ruled to restrict water deliveries from the Sacramento-San Joaquin Delta to the Bay Area, Central Valley and Southern California due to the endangerment of the endangered species delta smelt which has made the water supply issue more complex.

In the 2007 Regular Session, the Legislature enacted and the Governor did sign into law legislation which enhances flood protection in California: SB 5 (Machado) requiring the Department of Water Resources and the Central Valley Flood Protection Board to prepare and adopt a Central Valley Flood Protection Plan by 2012, and establishing flood protection requirements for local land-use decisions consistent with the Central Valley Protection Plan; SB 17 (Florez) reforming and removing the Reclamation Board to the Central Valley Flood Protection Board and improving proficiency, and requiring development of the State Plan of Flood Control for the Central Valley; AB 70 (Jones) providing, generally, that a city or county may be required to contribute a fair and reasonable share of the increased flood liability caused by its unreasonable approval of the developments following the failure of a state flood control project; AB 156 (Laird) enhancing information and planning related to Central Valley flood protection and the improvement of the system by the Department of Water Resources and local agencies; AB 162 (Wolk) requiring cities and counties to address flood-related matters in the land use, conservation, safety , and housing elements of their general plans; AB 5 (Wolk) making clarifying and technical changes to the preceding bills.

The Governor and Senator Dianne Feinstein in July of 2009 reached an agreement to propose a \$9.3 billion water bond.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

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**SUPPORT:** (Unable to verify at time of writing)

Unknown, because of the many changes in the compromise that have been reached.

**OPPOSITION:** (Unable to verify at time of writing)

Unknown, because of the many changes in the compromise that have been reached.

DLW:mw 11/3/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

Revised – As Amended RN0925358

SENATE THIRD READING

SB 6 X7 (Steinberg)

As Amended November 3, 2009

Majority vote

SENATE VOTE: 21-0

SUMMARY: Creates a statewide groundwater elevation monitoring program. Specifically, this bill:

- 1) States legislative intent to have systematic monitoring and public reporting of groundwater elevations (i.e., distance from surface to water) in all groundwater basins and subbasins.
- 2) Allows local groundwater management entities to volunteer to assume responsibility to monitor groundwater elevation in all or a part of a basin or subbasin:
  - a) Requires entities that volunteer for groundwater monitoring to notify the Department of Water Resources (DWR) as to its interest, with specified information;
  - b) Requires DWR to consult with interested parties to determine which entity would monitor, based on certain priorities, if more than one entity volunteers for monitoring;
  - c) Requires DWR to identify the extent of groundwater monitoring in each basin, and prioritize groundwater basins for the purpose of this monitoring program, based on specified factors;
  - d) Requires DWR to work with well owners in basins that are not monitored to determine interest in groundwater monitoring and facilitate creation of a plan or association to monitor groundwater elevation in those basins; and,
  - e) Requires start of groundwater elevation monitoring on January 1, 2012, and makes such information publicly available through specified means.
- 3) Requires DWR to work with each monitoring entity to determine appropriate manner of reporting groundwater elevations.
- 4) Requires DWR to identify extent of monitoring, by 2012, and determine, in basins without monitoring, if there was a local party willing to conduct the monitoring or interest in developing a groundwater management association or plan.
- 5) Requires DWR, if no local agency volunteers to monitor groundwater elevation, to monitor groundwater elevation directly and charge well-owners for the costs of such monitoring.
- 6) Prohibits state agencies from awarding water grants or loans to counties and specified agencies overlying groundwater basins that do not comply with groundwater monitoring requirements:

- a) Ends funding prohibition when either the county or a local agency implements groundwater monitoring requirements; and,
  - b) Exempts funding for disadvantaged communities from funding prohibition.
- 7) Denies authority to entities implementing this groundwater monitoring program for entering private property with out consent or requiring property owners to submit groundwater monitoring information.
- 8) Allows formation of voluntary cooperative groundwater monitoring associations.
- 9) Allows funding for this program to come from unallocated bond funds for integrated regional water management funds.
- 10) Requires DWR to update groundwater report by 2012, and in years ending in 5 and 0.
- 11) Defines terms related to groundwater monitoring.
- 12) Makes bill contingent on enactment of SB 1 X7 (Simitian) and SB 7 X7 (Steinberg).

EXISTING LAW authorizes DWR to create a report on California groundwater (Bulletin 118), based on voluntary submission of information regarding groundwater conditions

FISCAL EFFECT: Unknown

COMMENTS: This bill would establish a statewide groundwater monitoring program to ensure that groundwater elevations in all groundwater basins and subbasins are regularly and systematically monitored locally and that the resulting groundwater information be made readily and widely available.

Need for Groundwater Monitoring: In the past five years, the Legislature has approved three bills to improve the State's access to groundwater information, but the Governor vetoed all three. In intervening years, groundwater problems have grown worse, largely because California is the last western state without any state groundwater management – and very little information about the conditions of the state's groundwater basins. Excessive pumping in the last century has led to substantial subsidence, as much as 55 feet in some areas. Recently, for example, on the west side of the San Joaquin Valley, where allocations of Delta water from the federal Central Valley Project were minimal, farmers responded by pumping more groundwater. DWR then reported that the State Water Project's canal, which passes through the area on its way south, may suffer cracks because of the high level of pumping and resulting slumping of the ground under the canal.

Backstop: Since the Assembly Water, Parks and Wildlife (WP&W) Committee considered this groundwater monitoring program, as part of SB 68 (the regular session version of this bill) on September 11, 2009, the "backstop" for basins where local agencies refuse to monitor groundwater changed from DWR monitoring groundwater and charging well owners, to the county or counties overlying the basin. If the county fails to arrange for such groundwater monitoring, it and eligible monitoring agencies lose access to state water grants/loans, until

groundwater monitoring is implemented. There is an exception, however, for funding for disadvantaged communities in such counties.

Limits on Local Agency Authority: Recent amendments address concern about the scope of activities to implement this program. The bill limits authority of local agencies, for the purposes of this program, to enter private property without the consent of the property owner or require a private property owner to submit groundwater monitoring information. Several local agencies already have this authority and implement more comprehensive groundwater monitoring programs than what is proposed here. This limitation would discourage agencies that already have such authority from volunteering to participate. It would therefore undermine the effectiveness of the program as a whole, by potentially limiting state access to the best available information on groundwater conditions, from those basins with existing groundwater monitoring programs.

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

FN: 0003492

**SENATE RULES COMMITTEE**

SB 6XXXXXXX

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

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UNFINISHED BUSINESS

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Bill No: SB 6XXXXXXX

Author: Steinberg (D)

Amended: 11/3/09

Vote: 21

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SENATE FLOOR: 21-13, 11/3/09  
(ROLL CALL NOT AVAILABLE)

ASSEMBLY FLOOR: 44-25, 11/3/09  
(ROLL CALL NOT AVAILABLE)

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**SUBJECT:** Groundwater monitoring program

**SOURCE:** Author

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**DIGEST:** This bill, in conjunction with SBX7 1 and SBX7 7, is the culmination of months of negotiation to create a comprehensive water package. Specifically, this bill establishes a statewide groundwater monitoring program. This bill requires the Department of Water Resources (DWR) to work cooperatively with local groundwater management entities to determine who would conduct the groundwater monitoring. If no entity volunteered to do the monitoring, the county would be required to conduct the monitoring.

Assembly Amendments delete the contingency language relating to SB 5XXXXXXX.

**ANALYSIS:** Existing law authorizes a local agency whose service area includes a groundwater basin that is not subject to groundwater management to adopt and implement a groundwater management plan pursuant to certain provisions of law. Existing law requires a groundwater management plan to

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include certain components to qualify as a plan for the purposes of those provisions, including a provision that establishes funding requirements for the construction of certain groundwater projects.

Existing law requires DWR to conduct an investigation of the state's groundwater basins and to report its findings to the Governor and the Legislature not later than January 1, 1980.

This bill establishes statewide groundwater monitoring program. Specifically, this bill:

1. States legislative intent to have systematic monitoring and public reporting of groundwater elevations (i.e., distance from surface to water) in all groundwater basins and subbasins.
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3. Potential monitoring entities include:
  - A. A watermaster appointed by a court.
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- D. A local agency that is managing all or part of a groundwater basin or subbasin pursuant what are known as AB 3030 plans.
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  - F. A county.
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    - A. Identify any existing monitoring wells that overlie the basin or subbasin that are owned or operated by the department or any other state or federal agency.
    - B. Determine whether the identified monitoring wells provide sufficient information to demonstrate seasonal and long-term trends in groundwater elevations.
    - C. If the DWR should determine that the identified monitoring wells provide sufficient information, DWR would not perform groundwater monitoring functions
    - D. If the DWR should determine that the identified monitoring wells insufficient information to demonstrate seasonal and long-term trends in groundwater elevations, and the State Mining and Geology

Board concurs with that determination, the department would perform groundwater monitoring functions

8. Upon determining that DWR is required to perform groundwater monitoring functions:
  - A. DWR shall notify the affected parties that it is forming the groundwater monitoring district.
  - B. DWR shall impose a charge on each well owner for its share of the costs of DWR to perform the groundwater monitoring required under this part.
9. For purposes of this bill, neither any of the entities identified in #3 above, nor DWR, shall have the authority to do either of the following:
  - A. To enter private property without the consent of the property owner.
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#### Comments

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In the 1930s, major developments were taken to provide for the transfer of northern water to the south. The Legislature passed, in 1933, the Central Valley Act authorizing a \$170 million bond which was approved by the voters in a special December 19, 1933 election. However, due to the Depression, the bonds were unmarketable and the federal government had to take over the project as a public works project and construction started in 1935.

In the 1940s, outbreaks of waterborne diseases, degradation of fishing and recreational water and war time industrial development and population growth prompted water pollution problems. In 1949, in response to these problems the Legislature passed the Dickey Water Pollution Act which created the State Water Pollution Control Board to set statewide policy for pollution control and coordinating the actions of those state agencies and political subdivisions of the state in controlling water pollution. It established nine regional water pollution control boards located in each of the major California watersheds to oversee and enforce the state's pollution abatement program. The state board was renamed the State Water Quality Control Board. In 1969, the Legislature enacted the Porter-Cologne Water Quality Control Act which became recognized as one of the nation's toughest pieces of anti-pollution legislation and was influential in the passage, on the federal level, of the Federal Water Pollution Control Act Amendments of 1972 known as the Clean Water Act. The State Water Resources Control Board is now the entity which is concerned with water pollution.

In 1956, the Legislature, at a special session called by Governor Goodwin J. Knight, created the Department of Water Resources to develop a state water plan. In 1957, the plan was completed which included a system of reservoirs, aqueducts, pumping and power plants to transport water from the north to the south. In 1959, the Legislature enacted, and Governor Pat Brown signed, the Burns-Porter Act providing initial funding of \$1.75 billion in general obligation bonds, and placed it on the 1960 ballot. Compromises were reached in order for the Burns-Porter Act to become law. The north counties were assured that water would be available for future projects and \$130 million of the \$1.75 billion was earmarked for these projects. The County of Origin and Watershed of Origin Acts were reaffirmed by Burns-Porter. Delta water users were ensured their water uses and that good water quality for all purposes were available with the passage of the Delta Protection Act. For Southern California, the Burns-Porter Act required that the state not impose contracts for the sale and delivery of project water during the lifetime of the bonds. The voters approved the California Water Resources Development Bond (Burns-Porter) Act by a 51.5 percent to 48.5 percent margin at the 1960 General Election. The California Water Project now includes the following facilities and projects: Upper Feather River Project, Oroville Reservoir, North Bay Aqueduct, South Bay Aqueduct, San Luis Reservoir, Pacheco Pass Aqueduct, San Joaquin Valley-Southern California Aqueduct, and the Coastal Aqueduct.

The next issue of water was the building of a Peripheral Canal as part of the State Water Project. Construction of such a Canal has been proposed, since 1965, to move Sacramento River water through the eastern delta to the delta pumping plant. The Canal is to permit the release of high quality water into the main channels of the delta. These releases are expected to improve water quality in the channels, protect fisheries, flush lower quality waters from the delta and reduce the intrusion of sea water from the San Francisco Bay into the delta. The Canal would permit additional high quality water to be pumped from the delta to meet the state's contract commitments to water users under the State Water Project.

In 1980, the Legislature enacted SB 200 (Ayala) to expand the State Water Project, to specifically authorize construction of the Peripheral Canal, and to establish policy for operating conditions in the delta. Constitutional initiatives qualified for the ballot by environmentalists requiring constitutional guarantees against placing claims on the north coast rivers and providing strict guarantees for the delta and San Francisco water quality. The voters passed Proposition 8 tying approval of the Peripheral Canal to these environmental restrictions by 53.3 percent to 46.2 percent. In late 1982, a referendum qualified for the June 1982 ballot to overturn SB 200, which passed 62 percent to 38 percent.

In 1988, SB 34 (Boatwright) was enacted providing for the Delta Flood Protection Fund creating a delta levee maintenance program pursuant to which a local agency may request reimbursement for costs incurred in connection with the maintenance or improvement of project or non-project levees in the Sacramento-San Joaquin Delta. It provided \$120 million over 10 years. In 1992, the Johnston-Baker-Andal-Boatwright Delta Protection Act became law mandating the designation of primary and secondary zones within the legal definition of the delta, creating a Delta Protection Commission, and completion of a land use and resource management plan for the primary zone. In 2000, the CalFed Bay-Delta Program published a plan to fix the delta water problems and address its major water challenges over the next 30 years. DWR assumed a leading role in the implementation of the CalFed plan, including programs related to water storage, delta conveyance, delta levee system integrity, watershed management, water use efficiency, and water quality.

Hurricane Katrina, in 2005, prompted the Legislature and Governor to come up with a compromise to fix various infrastructure problems in the state--water being one. The Legislature and the Governor enacted AB 140, the



Preparedness and Flood Prevention Disaster Bond Act of 2004, which became Proposition 1E on the 2006 General Election ballot and the voters passed. The bond act provided \$4.09 billion in general obligation bonds for the rebuilding and repairs of California's most vulnerable flood control structures to protect homes and prevent loss of life from flood-related disasters, including levee failure, flash floods, and mudslides and to protect California's drinking water supply system by rebuilding levees that are vulnerable to catastrophes and storms.

On September 11, 2007, the Governor called a special session to protect and restore the Sacramento-San Joaquin Delta while also improving the reliability and quality of water supplies from that estuary and to address the short-term and long-term improvement of California's water management system.

The Governor proposed a \$9 billion water infrastructure plan including \$600 million from the bond measures passed by the voters in 2006 to relieve pressure on deltas from environmental concerns and to respond to the federal court ruling that will reduce water deliveries to Southern California; \$5.6 billion in water storage (\$5.1 billion for surface and \$500,000 for groundwater); \$1.9 billion for delta restoration and water supply reliability; \$1 billion in grants for conservation and regional water projects; and \$500 million in grants for specified watersheds throughout the state. The Governor also called for a new Peripheral Canal: SB 3XX and 4XX (Cogdill) and AB 4X (Villines). All these measures died when the extraordinary session adjourned.

Senator Perata introduced SB 2XX allowing a \$6.5 billion general obligation bond for water supply, reliability, delta sustainability, conservation and pollution cleanup, protection against invasive species, groundwater protection, water quality, and water recycling. SB 2XX was voted on by the Senate and was defeated on a party line vote.

The major difference between the two water plans was that the Governor provided for the building of surface storage facilities (dams) while SB 2XX included \$2 billion for regional grants to improve water supply reliability but did not exclude dams as long as that is the fastest, cheapest and most efficient way to increase water supply. SB 2XX would have emphasized regional decision making rather than investing control in DWR. SB 2XX would have set up a competitive process in each region to fund the projects that provide the most water at the lowest cost.



On August 31, 2007, Federal Court Judge Oliver Wagner ruled to restrict water deliveries from the Sacramento-San Joaquin Delta to the Bay Area, Central Valley and Southern California due to the endangerment of the endangered species delta smelt which has made the water supply issue more complex.

In the 2007 Regular Session, the Legislature enacted and the Governor did sign into law legislation which enhances flood protection in California: SB 5 (Machado) requiring the Department of Water Resources and the Central Valley Flood Protection Board to prepare and adopt a Central Valley Flood Protection Plan by 2012, and establishing flood protection requirements for local land-use decisions consistent with the Central Valley Protection Plan; SB 17 (Florez) reforming and removing the Reclamation Board to the Central Valley Flood Protection Board and improving proficiency, and requiring development of the State Plan of Flood Control for the Central Valley; AB 70 (Jones) providing, generally, that a city or county may be required to contribute a fair and reasonable share of the increased flood liability caused by its unreasonable approval of the developments following the failure of a state flood control project; AB 156 (Laird) enhancing information and planning related to Central Valley flood protection and the improvement of the system by the Department of Water Resources and local agencies; AB 162 (Wolk) requiring cities and counties to address flood-related matters in the land use, conservation, safety , and housing elements of their general plans; AB 5 (Wolk) making clarifying and technical changes to the preceding bills.

The Governor and Senator Dianne Feinstein in July of 2009 reached an agreement to propose a \$9.3 billion water bond.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

**SUPPORT:** (Unable to verify at time of writing)

Unknown, because of the many changes in the compromise that have been reached.

**OPPOSITION:** (Unable to verify at time of writing)

Unknown, because of the many changes in the compromise that have been reached.

CONTINUED

DLW:mw 11/3/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*



## California State Legislature

# THE 2009 DELTA & WATER LEGISLATION Legislative History

- VI. Water Infrastructure General Obligation Bond
  - A. Water Finance Informational Hearings (2006)
  - B. AB 8 X2 (Huffman/2008)
  - C. Final Outcome: SB 2 X7 (Cogdill)

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March 1, 2006

Senator Kevin Murray, Chair  
Conference Committee on Infrastructure Bonds

Letter of Transmittal

Dear Senator Murray:

The Senate Committee on Natural Resources and Water is pleased to present our recommendations for the proposed infrastructure bonds to the Conference Committee. As more fully described more fully in our attached report, we are recommending that the infrastructure bonds authorize a little more than \$8.0 billion for flood, water, and natural resources infrastructure investments.

The report details the reasons supporting the Committee's recommendations. In each case, the Committee has found the amounts set forth to be necessary to even begin to achieve our goals of flood safety, water availability and quality, and resource protection. The Committee held five hearings and have had a good deal of thoughtful input. Our conclusions and recommendations are based on good science and an integrated policy approach. In this transmittal letter, we present the figures, below, and then briefly explain other steps that can be undertaken throughout the year to complement these bond proposals.

**\$8.0 B TOTAL FLOOD, WATER, & NATURAL RESOURCES INFRASTRUCTURE**

**\$2.1 B Flood Protection**

\$600 M	Project Levee & Facilities Repairs
\$400 M	Flood Control System Improvements
\$400 M	Delta Levee Subventions & Special Projects
\$500 M	Flood Control Subventions Program
\$100 M	Floodplain Mapping Program
\$100 M	Floodway Corridor Program

**\$0.5 B Regional Water Management**

**\$1.0 B Statewide Water Management**

\$350 M	Water Quality Protection & Improvement
\$250 M	CalFed Bay Delta Program
\$400 M	Ecosystem Restoration & Improvement

**\$4.4 B Natural Resources Infrastructure**

\$1,970 M	Neighborhood, Community, & Regional Parks
\$1,800 M	State Parks & Wildlife Protection
\$675 M	Clean Water & Coastal Protection

In addition to allocating appropriate funds for these projects and programs, it also became clear to the Committee through the course of the hearings that solving the problems addressed in the bond will require the Legislature to ensure that proper priorities are set, appropriate policies are in place, and that institutions are capable of applying those priorities and implementing those policies. This is especially true for flood protection, but is also critical for regional and statewide water management.

Flood Protection. In addition to the figures set out above and the detail supporting those figures in the report, if we are to comprehensively reduce flood risks, we must, at the same time, strengthen the independence and resource capacity of the Reclamation Board. We must consider non-structural approaches to reducing flood risk, such as reservoir re-operation. And, we need to clarify the precise roles that federal, state, and local authorities ought to play in flood management, such as which funding responsibilities ought to belong to federal, state or local funding bodies, what principles ought to be applied to decide this, what role local land use planning ought to play, and how ought we approach flood management in those areas where traditional approaches are not cost effective. Separate legislation will be necessary to accomplish much of this.

Water. Integrated regional water management holds great promise. However, it is still a relatively new concept. Local water interests are still working out the details of how to integrate water management activities, what regional partnerships work best for each area, and how to prioritize competing funding needs. The Governor's water bond proposed to make significant changes to the rules governing integrated regional water management plans. While many of the proposed changes appear to have merit, these changes should be made through a policy bill.

At the statewide level, the CalFed Bay-Delta Program is in turmoil. This is amply documented in the recent Little Hoover Commission report titled *Still Imperiled, Still Important*. The goal of CalFed is laudable. It ought to be possible for various water interests to work cooperatively to reduce the conflicts in the delta. However, no one seems to actually have the responsibility for ensuring progress. There has been a remarkable lack of fiscal accountability on the part of the California Bay Delta Authority and the implementing agencies. It is not clear who determines which specific program expenditures are necessary to meet the program goals, nor how that determination is made. Federal participation, both financially and programmatically, has been woefully lacking. Separate legislation and budgetary actions will be necessary to resolve the problems with CalFed.

Resources. In terms of the resource-related expenditures for "natural infrastructure" proposed by the Committee, a few of the recommended funding allocations will need complementary policy bills or modest changes to the proposed bond language. These include but are not limited to the mercury remediation program, the working landscape easements, the grants program at the Coastal Commission for local coastal plans, and the forestry program. I am confident that the Conference Committee understands that expenditures for natural infrastructure are essential in order that our citizens can fully enjoy the benefits of our built environment.

A special comment on the Governor's proposed Water Resources Investment Fee: Though we simply pass it on to the Committee, as promised, with the rest of the proposal, we do not support it. Many believe there are sound reasons for some sort of resources consumption charge on water. However, there are vastly different opinions on how the charge should be assessed, and how to decide how the proceeds should be used. The timeline for approving the Governor's proposed bonds simply does not allow sufficient time to properly evaluate all the issues that this proposed charge raises. We, therefore, recommend that the Legislature continue to work to evaluate and resolve the issues raised by this proposed water charge through the regular legislative process.

Senator Murray, Chair  
March 1, 2006  
Page 4

Members of both houses have introduced a number of bills this session to address many of these issues. Our Committee is looking forward to working with the authors of these bills to ensure that proper priorities are set, the appropriate policies are in place, and our institutions are capable of applying those priorities and implementing those policies.

In closing, we view the flood, water, and resources part of the infrastructure bond package as a critical and co-equal partner with the education and transportation parts of the package. We all know that the policy committees considering these other two issue-areas will recommend larger amounts of funding than we are recommending for water, flood, and resources. However, our objective is for the resources, water, and flood portion of the package to be treated fairly and proportionately in the totality of the infrastructure package.

A handwritten signature in black ink, reading "Sheila Kuehl". The signature is written in a cursive, flowing style with a large initial 'S'.

Senator Sheila J. Kuehl, Chair  
Senate Committee on Natural Resources and Water



SUBJECT MATTER HEARING  
**Water Management Funding**  
Tuesday, January 31, 2006 – 2:00 p.m.

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# SUBJECT MATTER HEARING

## Water Management Funding

Tuesday, January 31, 2006 – 2:00 p.m.

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### Background and Issue Paper<sup>1</sup>

California enjoys a long history of water management infrastructure development. In the 1870s, the State authorized the first water districts, in order to promote cooperative development of water facilities, starting in the San Joaquin Valley. In 1933, the Legislature took the historic step of authorizing the State Central Valley Project, consisting of Shasta Dam, Friant Dam, and various canals. The State plan included financing with revenue bonds, with project costs repaid by water and power users. During the Depression, however, the State could not afford to build the project. The Federal Government took over the project in 1935, under the auspices of the Bureau of Reclamation, which now oversees the Central Valley Project – its largest project.

In 1959, the Legislature authorized the State Water Project (SWP). The project was principally financed by a \$1.75 billion general obligation bond, state revenue bonds, loans from a state tideland oil revenue account, and power revenues. The costs of the project are principally repaid by the SWP water contractors. The State pays for recreation and fisheries enhancements upon approval by the Legislature, but these costs are a relatively small percentage of the total.

**Focus on Delta.** In the late 1970's, the Legislature approved the Peripheral Canal as an addition to the State Water Project, but the voters rejected the project in a 1982 referendum. Shortly thereafter, Governor Deukmejian proposed the Through-Delta Plan as an alternate to the Peripheral Canal in the mid-1980s, but the Governor dropped his bill. In 1984, the Legislature authorized Los Banos Grandes Reservoir as an addition to the SWP, but the reservoir was never constructed.

After the demise of the Peripheral Canal and the Through-Delta Plan, the Legislature and the voters (by initiative) made another fundamental policy change: using state General Fund bonds to pay for local water projects – with no requirement for subsequent reimbursement by local agencies that benefit from such projects. Such projects included local water conveyance projects, drinking water quality improvements, watershed improvements, fishery improvements, and reservoir studies.

During the 1987-92 drought, Delta water conflicts escalated. USEPA declared the 1978 Delta water quality plan invalid. Two fish species edged toward extinction, leading to greater federal regulation under the Endangered Species Act. Delta exports were reduced to protect the fishery. In 1992, the Congress amended the federal Central Valley Project Act to provide more water for fish and wildlife, thus reducing water available for its water contractors. The State and the Federal Government battled over control of the Delta.

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<sup>1</sup> This paper was prepared collaboratively, with substantial assistance from staff from Republican Caucus, Senate and Assembly Budget Committees, and Assembly Committee on Environmental Safety and Toxic Materials. Committee staff edited such contributions, except for material noted as "Prepared by Republican Caucus Staff." The LAO also has prepared a paper on the Governor's water funding proposal, and parts of that paper have been included in this paper where relevant to particular issues.

In the midst of all this conflict, environmentalists, urban water agencies, and agricultural water agencies began discussing how to resolve the conflict – the so-called “three way process.” Separately, the various federal agencies began coordinating their Delta efforts, in what became known as “Club Fed.” In 1994, Club Fed began working with the State to resolve the conflict over Delta water quality standards and fishery needs, leading to the landmark 1994 "Bay-Delta Accord," which created consensus water quality standards. The State and the Federal Government then created the “CALFED Bay-Delta Program” which was a cooperative, multi-agency coordination effort to address the Delta's long-term needs.

For the next five years, the two governments worked together to develop a joint Environmental Impact Report/Statement to address the Delta's needs. In an August 2000 "Record of Decision" (ROD), they adopted four coequal objectives for improving the Delta – water supply reliability, ecosystem restoration, water quality and levee system stability. The ROD's most important decision was to use the existing conveyance system for Delta water exports – through the Delta – with reconsideration of that decision set for 2007.

In recent years, CALFED has encountered rough water. The fiscal conditions of both the State and the Federal Government deteriorated, leading to less funding than was proposed in the CALFED ROD. At this point, State bond funding approved in 1996, 2000 and 2002, is running out. Despite years of work, CALFED failed to develop a consensus as to how and who should pay for CALFED programs. Stakeholders and public officials continued debating how to pay for the Delta's needs. Last year, legislative budget committees reduced the CALFED budget and the Governor responded with a comprehensive fiscal, programmatic and governance review of the entire CALFED Program. At the same time, the Department of Fish and Game reported a substantial decline in the health of the Delta ecosystem, which has affected the progress of Delta water supply reliability projects. Now that the Governor's reviews have been completed, the Legislature still has the responsibility to address how best to reorganize CALFED to accomplish its four objectives for improving Delta conditions.

## I. Financial Summary of Bond Proposals Re: Water Management

(in millions, unless otherwise indicated)

<b>Governor's Bond Proposal: AB 1839</b>		
<b>INTEGRATED REGIONAL WATER MGMT</b>	<b>TOTAL \$2B</b>	<b>TOTAL \$4.5B</b>
<b>Regional Water Mgmt</b>	<b>\$1,000</b>	<b>\$2,000</b>
North Coast	(45)	(90)
San Francisco Bay	(147)	(294)
Central Coast	(61)	(122)
Los Angeles-Ventura	(220)	(440)
Santa Ana River	(121)	(242)
San Diego	(98)	(196)
Sacramento River	(81)	(162)
San Joaquin River	(66)	(132)
Tulare Lake	(68)	(136)
Lahotan	(48.5)	(97)
Colorado River Basin	(44.5)	(89)
<b>Statewide Water Mgmt</b>	<b>\$1,000</b>	<b>\$2,500</b>
Protect & Improve Water Quality	(250)	(500)
Water Storage Development	(250)	
Water Resources & Quality Science & Technology	(300)	(500)
Resource Stewardship & Ecosystem Restoration	(200)	(500)
State Share of Water Storage Projects Under CALFED		(1,000)

<b>SB 153 (Chesbro) – September 2, 2005</b>	
<b>Clean Water and Coastal Protection</b>	<b>TOTAL: \$875</b>
State Coastal Conservancy: protection of land and water	(250)
- local coastal watershed projects – not less than \$15 million	
Clean Beaches, Water Quality, Integrated Regional Water Management	(410)
- SWRCB Clean Beaches: \$100 million	
- DWR Integrated Regional Water Management \$200 million	
- SWRCB Mercury Contamination Cleanup \$100 million	
- DHS Emergency Actions, Clean Water in Low-Income Communities: \$10 million	
California River Parkways	(50)
Ocean Protection Trust Fund, scientific data, sustainable fisheries	(100)
DWR Urban Stream Restoration Projects	(25)
SWRCB New River Cleanup and Remediation	(40)

<b>Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2004 (Proposed Initiative)</b>	
<b>Safe Drinking Water</b>	<b>\$240</b>
Small Community Drinking Water System Improvement Grants	(180)
Emergency Safe Drinking Water Projects	(10)
Safe Drinking Water Revolving Fund	(50)
<b>Integrated Regional Water Management</b>	<b>\$1 billion</b>
<b>Water Quality</b>	<b>\$435</b>
Clean Water Revolving Fund	(50)
Groundwater pollution prevention	(60)
Delta water quality projects	(130)
Agricultural wastewater cleanup	(15)
Stormwater pollution prevention	(90)
Clean Beaches program	(90)
<b>Resources Stewardship (Partial List)</b>	<b>\$370</b>
Bay-Delta NCCP	(20)
Coastal Salmon and Steelhead restoration	(45)
CalFed ERP	(115)
Colorado River QSA implementation	(36)
Lower Colorado MSCP	(7)
Salton Sea restoration	(47)
San Joaquin River	(100)
<b>Statewide Water Planning and Design</b>	<b>\$65</b>
<ul style="list-style-type: none"> <li>• Evaluation of climate change impacts on flood and water systems Surface storage planning and feasibility (CALFED)</li> <li>• Flood protection improvement</li> <li>• Integration of flood control and water supply systems</li> </ul>	

## II. Broad Executive Discretion

Historically, the process of funding water programs through State bonds has involved both the executive and legislative branch. Bond proposals were developed either through the Legislature, with the Governor signing bond bills, or by initiative, where the Legislature holds a hearing. The Legislature's bond bills gave at least some general direction as to how the bond funding should be directed. Once the water bond passed, the Legislature retained its authority to make annual appropriations that provide further direction as to how State agencies should spend bond funding. Then the Legislature provides oversight as to that bond funding, particularly in making further annual appropriations. This Governor's bond proposal sets a different course.

**LAO Comment: *Key Policy Decisions to Be Made Administratively.*** As mentioned above, much of the funding in the bill is tied to the concept of integrated regional water management planning—a fundamental concept that is to be defined in regulations to be adopted by DWR. As another example of the bill's deference to future policy-laden administrative action, the bill provides that the California Water Commission can propose changes to the fee schedule of the water resources capacity charge. These changes will become effective unless overturned by legislative enactment of a statute within 60 days after receipt of the commission's recommendation to make the changes. As yet another example, the 2010 bond act provides that the \$640 million of funds for Delta special flood control projects are to be guided by the "Delta risk management strategy"—a strategy that has yet to be developed by the administration.

### A. Continuous Appropriation

<p><b>Proposed Continuous Bond Appropriations</b>  2006: \$2.25 billion  2010: \$200 million</p>
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**Background.** The Constitution of California separates the powers of state government into three main branches. Under this system, the legislature makes the laws, the executive executes the laws, and the judiciary interprets the laws. The State Constitution provides that persons charged with exercise of one power may not exercise either of the others except for specific exemptions provided in the State Constitution. This provides for separation of powers among the branches of government.

One of the fundamental checks on the Executive branch of government is the legislative branch's power to appropriate funds. In the budget process, the role of the Governor is to develop and propose a budget and the role of the Legislature is to review the proposed budget, amend where necessary, and appropriate the funds to implement the budget. Programs funded by continuous appropriations do not go through the normal budget process, which limits the Legislature's ability to review and amend expenditures proposed from continuous appropriations.

Government Code Section 13340 provides that continuously appropriated funds may not be encumbered unless the Legislature, by statute, specifies that the funds are appropriated for encumbrance. Besides a few exemptions provided by this section, all funds must be appropriated through the budget process unless there is a specific statutory authorization to do otherwise. Recent bond measures have allowed continuous appropriations of limited, specified amounts of funding. For example, Proposition 50 provided \$750 million in continuous appropriations to the Wildlife Conservation Board for land acquisitions.



**LAO Comment: *Continuous Appropriations Authority.*** The bill provides that almost \$2.5 billion of bond funds and \$2.5 billion (estimated) of revenues in the California Water Resources Investment Fund are continuously appropriated to DWR. This reduces legislative input and review of projects to be funded. Of particular note is that most of the continuous appropriations authority is provided to brand new programs that do not have established funding eligibility guidelines and administrative processes in place. (The one exception being the \$450 million total of continuous appropriations in the two bonds for flood control subventions.)

**Governor's Bond.** The Governor proposes continuous appropriation of \$2.25 billion of the 2006 water bond. The 2010 bond provides an explicit continuous appropriation only for \$200 million in flood control subventions. The Governor also proposes continuous appropriation of all funds generated by the proposed Water Resources Investment Fund fee.

#### **Committee Questions.**

1. Why does the Governor's water bond proposal contain programs that would be continuously appropriated?
2. Is it the Administration's position that using continuous appropriations ensures funding for projects through their completion?
3. How has the Legislature set policy and direction for these new programs, considering DWR has not yet developed any regulations for integrated regional water management plans?

#### **B. Broad Allocation Categories**

**Background:** Past water bonds have provided direction, often specifically, as to how individual amounts of money should be spent. The Burns-Porter Act, adopted by voters in 1960, paid for the State Water Project, which was defined as to specific facilities, beneficiaries and water resources. Proposition 13 (AB 1584, Ch. 725), adopted in 2000, allocated money for the developing CALFED Bay-Delta Program and for specific local water projects. In 2002, Proposition 50, an initiative bond, allocated funds to categories of projects "for appropriation by the Legislature." These categories, however, focused on specific types of projects, which provided the Legislature with both direction and flexibility in their appropriation decisions. For example, Prop. 50 allocated \$40 million "to the California Tahoe Conservancy for acquisition from willing sellers, restoration, and protection of land and water resources to improve water quality in Lake Tahoe."

The challenge in specifying bond fund allocations in the bond language is providing a balance of specificity and flexibility. Allocations require enough specificity to give adequate direction and set priorities among competing purposes. But the Legislature and the Governor still need enough flexibility in its appropriations to make annual judgments as to program effectiveness and then adjust program direction as conditions change. This flexibility allows the Legislature to exercise oversight over bond funding during the appropriation process, as well as adjust funding as conditions change.

**LAO Comment: *Many Programs Have Very Broad Funding Parameters, Not a Sense of Funding Priorities.*** There are a number of programs funded under the bond acts and the California Water Resources Investment Act that have extremely broad funding parameters and where the statutory language does not give a sense for funding priorities within the program area. In particular, these include provisions allocating a total of \$1.5 billion for "science and technology" and for "resource stewardship and ecosystem restoration" in the two bond acts and



the provisions related to expenditures from the "State Investment Account" in the California Water Resources Investment Fund (estimated to total \$2.5 billion over ten years).

**Governor's bond**, in contrast, transfers \$2 billion to the Integrated Regional Water Management Account, with a continuous appropriation, in the 2006 bond. It then allocates \$1 billion for regional water management projects, with specific allocations to regions. Then the bond proposal lists five broad categories of projects that can compete for this funding, but provides no further direction as to priorities or allocation among these categories of projects. This structure provides the Executive Branch with broad discretion and little direction as to the kinds of projects ultimately funded. This broad discretion is balanced with "preferences" for proposals that promote certain policy goals. *See, pages 22-23 of AB 1839.* The preferences include:

- Integration of region-wide water management
- Integration of water management and land-use planning
- Resolution of significant regional or inter-regional water resource conflicts
- Attainment of one or more CALFED objectives
- Promotion of statewide water management priorities, which are undefined
- Promotion of water supply or quality needs for disadvantaged communities
- Provision of multiple benefits
- Readiness to implement

The 2006 bond proposal allocates an additional \$1 billion to the Statewide Water Management Account (*See pp 25-27 of AB 1839.*), with:

- \$250 million for water quality
- \$250 million for water storage
- \$300 million for water technology
- \$200 million for resource stewardship

Within these categories, there are similar listings of the kinds of eligible projects, but with no priorities or other specific allocation among the categories of projects, other than \$20 million for "costs incurred" for enhancement of fish and wildlife or public recreation by the SWP.

#### **Committee Questions:**

1. How does the bond proposal establish policy priorities for funding?
2. Why does the bond proposal fail to provide greater specificity as to allocations?
3. Why does the Administration believe it should have such broad discretion in allocating bond funding among competing water resource priorities?

### **C. Concentration of Authority and Responsibility**

**Background:** Past water bonds have allocated funding to a broad array of agencies for implementation. DWR often has received the bulk of water funding, but other State agencies with responsibilities and expertise related to water resources also have received funding. In the Delta, the California Bay-Delta Authority coordinates among all agencies with responsibilities in the Delta. The Department of Fish and Game (DFG) addresses fishery issues. The SWRCB and the Department of Health Services address water quality issues.

Such dispersion of implementation authority and responsibility creates both opportunities and challenges. It allows the agencies to share the burden of effectively expending large sums of bond funding. It also allows each agency to use its particular expertise in a policy area to judge how best to achieve the State's objectives in investing such sums. Diffusion of responsibility, however, also diminishes accountability, making it difficult to hold one agency or official

responsible for program implementation. Moreover, some agencies have shown greater effectiveness at implementing programs than other agencies, particularly regulatory agencies that lack the programmatic expertise to implement a program in a timely and effective manner.

**LAO Comment:** *Unclear Fit Within Existing Related Programs in Departments Outside of DWR.* The two bond acts and the California Water Resources Investment Act give DWR the responsibility for allocating all of the funding from these acts. In some cases, DWR is charged with allocating funds for program activities that are mainly the responsibility of other departments (such is the case with the ecosystem restoration program). More generally, it is unclear how the programs funded by these acts tie to the multiagency CALFED Bay-Delta Program, a program with similar objectives.

**Governor's bond** allocates all of the bond funding to DWR, but requires DWR to "consult" with other agencies. These DWR allocations include responsibility for "resource stewardship and ecosystem restoration," including agricultural land conservation easements and habitat conservation planning. These responsibilities are not DWR's primary responsibility, and more properly belong with other agencies, particularly DFG. The definition of consultation, however, is not provided. It is unclear, for example, whether other agency opposition to proposed DWR spending decisions would have any legal effect or consequence.

#### **Committee Questions:**

1. Why does DWR receive the entire financial allocation for all bond-funded programs, including programs traditionally managed by other agencies?
2. How will other agencies be able to affect DWR's decisions when DWR consults with them? Will consultation assure sufficient coordination of such complex water programs?
3. Does the DWR allocation for "resource stewardship and ecosystem restoration" mean that such funding will be limited to environmental mitigation for water projects?
4. Will interagency consultation provide for the level of "coordination" that the California Bay-Delta Authority has provided for Delta issues?
5. Would funding for development of the "Mitigation Bank" project in the Project Levee and Facilities Repairs Subaccount be allocated from the "resource stewardship and ecosystem restoration" section of either bond act?

### **D. Compliance With Future Policy**

**Background:** Allocations of bond funding often reflect adoption of various policies that the executive and legislative branches have forged together. Such policies may be fully developed, or the policy may reflect certain direction for developing such policy. Proposition 13, for example, allocated substantial funding for the CALFED Bay-Delta Program, including projects to be funded after completion of an EIS/EIR in cooperation with the Federal Government. While the CALFED EIS/EIR had not been completed by that point, the Legislature did adopt a policy direction for the spending by: 1) specifying projects *in the Delta*; 2) requiring completion of the EIR/EIR; 3) specifying that CALFED "will achieve balanced solutions in all identified problem areas, including the ecosystem, water quality, water supply, and system integrity." While bond funding allocations may be made before the related policy is final, the Legislature provides at least some general policy direction in bond language, policy bills, or subsequent appropriations.

Over the last decade, California water policy has changed significantly, as often reflected in the California Water Plan, which is otherwise known as DWR Bulletin 160. Much of California water policy debate has focused on the Sacramento-San Joaquin Delta. In 1994, the State began

working collaboratively with the Federal Government in shaping Delta policy, which indirectly changed statewide water policy due to Southern California's reliance on the Delta. In the last year, DWR has proposed taking some new directions in its *draft* California Water Plan, which emphasizes integrated regional water planning. These new directions, however, have not been adopted or fully delineated by the State – or embraced by the regions asked to implement them.

**Governor's bond** requires that funding be expended consistent with policies that are either unspecified or yet-to-be-developed. In the flood management section, the bond proposal requires consistency with the "Delta Risk Management Strategy," which is not expected before 2008. In the water management section, the bond proposal requires that the \$6.5 billion in both the 2006 and 2010 bonds be spent "to implement integrated regional water management and statewide water management priorities as described in the California Water Plan, *as updated*." (Emphasis added.) Considering the vast changes in that plan over the last decade, it is unclear the nature of the plan a decade from now, making the "priorities" uncertain. Finally, the bond proposal requires DWR to develop regulations defining "integrated regional water management plans."

**Committee Questions:**

1. What are the "statewide water management priorities" referenced in AB 1839, and how will those priorities be "updated" over the life of these bonds?
2. How does protection of the Delta fit into regional management and statewide priorities, or is it now just part of another region? Is CALFED still a statewide priority?
3. How will the Legislature participate in setting statewide priorities and policies in the future? Does the Administration propose any parameters for these future decisions?

### III. Fiscal Issues

As with any bond proposal, substantial fiscal issues arise. The Legislative Analyst's Office and others have identified the issues discussed below, as well as other issues discussed in their paper analyzing the Governor's bond proposal related to flood and water infrastructure.

#### A. Bond Funds for Non-Capital Assets

**Background.** Section 16727 of the Government Code requires the expenditure of general obligation bond proceeds be for the construction or acquisition of capital assets. Capital assets are defined by the law as tangible physical property with an expected useful life of 15 years or more. However, the law also allows up to 10 percent of the bond proceeds to be used to fund capital assets with an expected useful life of only 10 to 15 years. Furthermore, the law explicitly allows for the purchase of equipment and the funding of activities directly related to construction or acquisition of capital assets, including planning, the preparation of environmental impact reports, and mitigation expenses. This section of law limits the types of expenditures that can be supported from the proceeds of general obligation bonds.

In the past, some bond funds have paid for limited non-capital assets, by explicitly exempting the bond from application of Section 16727. A blanket exemption to this law was made in Proposition 13 (Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Fund, 2000). Bond funds have been expended for non-capital assets when the bond explicitly provides for what activities the bond funds can support. For example, bond funds were explicitly allowed for groundwater monitoring activities in Proposition 50.

The critical policy issue here is when should the State pay for continuing agency operations with borrowed money. Traditionally, bond funding supports capital projects, so future taxpayers who enjoy the benefits of those projects pay for their creation. The same logic does not apply to current State agency operations that do not benefit future generations.

**LAO Comments:** *Using Bond Funds for Noncapital Purposes.* As noted in the figure on page 2, a large portion of the funding under the two bond acts is allocated in provisions that are stated to be “notwithstanding Government Code section 16727.” This Government Code section essentially provides that general obligation bonds are to be used for capital purposes. In some cases it is clear why the “notwithstanding” provision is needed—such as to allow bond funds to be used for floodplain mapping. However, the notwithstanding provision applies to the whole water management component of the two bond acts, totaling \$6.5 billion. It is unclear why the notwithstanding provision is made to apply so broadly; this opens the door to expensive debt financing of noncapital expenditures if controls are not put in place to limit this practice.

**Governor’s Bond.** The Governor’s water bond exempts \$6.6 billion of the total \$9 billion in bonds proposed from Government Code Section 16727. This means that a vast majority of the bond funds could be expended on various non-capital projects.

#### Committee Questions:

1. What is the Administration’s rationale for exempting the entire water management bond fund from the restrictions under Government Code Section 16727?
2. What non-capital activities is the Administration proposing for the water management bond funds?

## B. Eligibility of Private Entities for Bond Funding

**Background:** Statewide, drinking water is generally supplied through three types of water systems: 1) public agencies (such as local water districts); 2) private, not-for-profit mutual water companies (entities whose shareholders are the landowners served by the water system); and: 3) private, for-profit corporations. Private water companies provided water to approximately 23 percent of the state's population. Private, not-for-profit mutual water companies set their own rates and private, for profit water corporations are regulated by the California Public Utilities Commission (CPUC). The Department of Health Services regulates drinking water quality for all publicly and privately owned water systems with 15 or more service connections.

Past resources bond measures restricted the allocation of grants and loans to public agencies and non-profit organizations. However, Proposition 50 was silent on the subject and private water companies have been allowed to receive loans and grants from Proposition 50 bond funds.

The State Constitution precludes the Legislature from making a gift of public funds to a private person or corporate entity (Section 6 of Article XVI of the California Constitution). However, according to Legislative Counsel, the allocation of public funds to private entities would not result in an unlawful gift of public funds as long as the funds are expended for a public purpose.

**LAO Comment: *Eligibility of Private Entities for Funding.*** The two bonds acts and the California Water Resources Investment Act all provide that entities eligible to apply for water management grant funding include investor-owned utilities and incorporated mutual water companies. While this raises tax issues and legal issues (the latter related to the constitutional provision that precludes the Legislature from making a gift of public funds to a private person or corporate entity), the major issue for legislative consideration is a policy one.

**Governor's Bond.** The Governor's water bond and the California Water Resources Investment Act all provide that entities eligible to apply for water management grant funding include private not-for profit mutual water companies and private for profit corporations. The bond also includes language to address the issue of gifting public funds to private companies by restricting the funds made available by the bond of the California Water Resources Investment Act for the benefit of the ratepayers and not the investors. This would be regulated by the CPUC.

### **Committee Questions:**

1. Would capital assets procured by private companies with public funds be considered private or public property?
2. Does the CPUC have an adequate regulatory system in place to ensure that public money is only benefiting ratepayers and not investors?

## C. Creation/Use of Sub-accounts

**Background:** The creation of "accounts" and "subaccounts" for each program specific allocation in a bond began with Proposition 204, a water bond approved by voters in 1996. That bond act created one fund, five accounts, and 17 subaccounts. This pattern continued with Proposition 13, another water bond approved by the electorate in March 2000. That bond act created two funds, six accounts and 26 subaccounts. These past water bonds have created 11 new accounts and 43 subaccounts, just for water bond funding. It should be noted that the general practice, particularly with the parks and natural resources bonds, is to create a single bond fund



(per bond) from which all allocations are made. Nor did Proposition 50, an initiative water bond approved in 2002, include such accounts.

Creating such numerous accounts and subaccounts produces benefits and costs. On the one hand, creating an account and/or a subaccount for each bond allocation may allow for easier tracking and accounting of appropriations and expenditures. . These accounts and subaccounts also may prevent a recipient department from over expending its allocation.

On the other hand, such a structure makes for a more costly administration of the bond—particularly from a State budgeting and accounting perspective. For the previous water bond acts, each subaccount and in many cases each account is treated for budget and accounting purposes as a single, stand alone fund. Thus, it is treated like another other state special fund—its own fund code, its own line item, etc. One bond recipient department estimates its costs to be up to \$100,000 per special fund annually to administer and manage the fund pursuant to standard budget and accounting practices.

The swelling of such accounts also makes it difficult for the public (or even legislative staff) to determine the financial status of so many accounts. In the past, in order to create a less voluminous budget and hold down printing costs, the Administration chose to no longer reflect bond fund conditions in any specificity. One option to ensure transparency when reporting on bond expenditures would be to require the Administration to provide a fund condition for each bond by allocation in the Governor’s Budget. This mandate could be included in the bond itself. Given the advent of “E-Budget,” then the Administration should reinstate its practice of providing this critical bond information through automated reporting.

**Governor’s bond** proposes creation of one fund, two accounts and eight subaccounts. Thus, with the previous water bond accounts, the total would grow to 13 accounts and 51 subaccounts for water bonds alone.

### **Committee Questions**

1. Why does this bond proposal require so many accounts and subaccounts?

### **D. Limits on Administrative Costs** *(Prepared by Republican Caucus Staff)*

**Background:** In previous bond proposals, the department responsible for the administration of programs, depending of the statutory language governing the authorization, has been able to recover the costs of administration. This is often in addition to the authorization of the Department of Finance to recover the costs of issuing bonds. Typically, in code sections authorizing a department cost-recovery funds, a limitation of 5% of bond funds is the maximum amount dedicated to such purposes.

According to information provided by the Department of Water Resources and the CALFED Program even in code sections where no provision is made for administrative cost recovery has been made, program funding has been reduced by the administering agency for those costs. The table below shows that DWR has impounded bond funds allocated to programs at a rate anywhere from 5% to 10.4% of appropriated funds, for the purposes of state operations.

### DWR Utilization of Bond Funds for Departmental Budgets

#### DWR State Operations

W.C. Section 79045 (a)	(\$30 Million - 7%):	\$ 2,192,778
W.C. Section 79068.6	(\$70 Million - 6%):	\$ 4,250,000
W.C. Section 79055 (a)	(\$45 Million - 5%):	\$ 2,250,000
W.C. Section 79035	(\$70 Million - 5%):	\$ 3,500,000
W.C. Section 79033 (a)	(\$2.5 Million - 5%):	\$ 125,000
W.C. Section 79551	(\$70 Million - 10.4%):	<u>\$ 7,300,000</u>
<b>Total:</b>		<b>\$ 19,617,778</b>

The "Total" amount withheld for "State Operations" averages 6.4% of funding allocated by the referenced code sections.

**LAO Comment: *Administrative Costs.*** Unlike a number of previous resources bond measures, the two bond acts in the bill do not provide any parameters or caps on bond-funded administrative costs to administer the grant programs funded by the bonds.

**The Governor's Bond** contains no cap on the amount of funding that may be allocated to DWR, the Board of Equalization, or the California Water Commission for the purposes of administration or for state operations of any program authorized by either the 2006 or the 2010 bond acts.

#### Committee Questions:

1. Since 5% of the proposed \$9 billion bond package could equal \$45 million per budget year, in addition to any cost recovery authorized and associated with the Water Resources Investment Fund, shouldn't there be specific language addressing the maximum amount allocated to DWR State Operations, if any?

### E. Water Resource Investment Fund

**Governor's bond** proposes the Water Resource Investment Act as part of his water bond proposal. The stated goal of this act is to address the water-related needs of a growing state by applying an integrated regional water management approach and providing a new stable source of funding to address these state and local needs. The program will be funded by a new water resources capacity charge imposed on every retail water supplier in the state, based on the actual number and types of water connections in each supplier's service area. The bill provides a schedule of the capacity charges, varying from \$0 to \$10 per connection, depending on the type of water connection. The fee would initially raise about \$380 million annually and is projected to raise \$5 billion over the next 10 years to help fund the Governor's Strategic Growth Plan.

The revenues in the investment fund are to be allocated as follows:

- 50 percent would be allocated to 11 regional investment accounts. Each regional investment account would receive a base allocation of \$35 million and then additional revenues would be allocated on a pro rata basis reflecting the amount of the capacity charge revenues



collected in each region. These funds are proposed to be continuously appropriated to the regions, but are to be expended only on projects consistent with an integrated regional water management plan adopted by the Department of Water Resources. These funds can be used as the local match for the construction of surface storage.

- 50 percent would be allocated to a state investment account. Moneys in this account are to be expended upon appropriation by the Legislature based on a very broad set of priorities, including a support for priority regional projects and water infrastructure of statewide significance.

Future adjustments to the fee would be controlled by the California Water Commission, also created in the Act. Every five years the Commission would make recommendation to the legislature every five years as to the appropriate level of the fee. These recommendations would then become effective within 60 days unless the Legislature takes action otherwise.

**LAO Comment: *Imposing, and Structuring, the Water Resources Capacity Charge.*** The decision to impose a water resources capacity charge—which the bill declares to *not* be a tax—and the choice of a particular structure for this charge, involve major policy choices. The particular structure for this charge in the bill is a fixed charge based on category of user (such as single-family residential) that does not vary depending on the amount of water use by users within that category. While such a structure would make collection of the charge administratively easy, it would not serve to promote water conservation behavior, which is a potential policy objective in structuring a fee on water users.

### **1. Beneficiary Pays.**

The beneficiary pays principle requires that costs, to the extent possible, be paid by the beneficiaries of the program actions. The beneficiary pays principle is not new. Historically, all of the state's major water projects have been paid for with funds from the local water agencies that benefited from the water projects. For example, the state authorized the State Water Project in the 1960's and it was the responsibility of local water agencies to sign contracts with the state to guarantee full cost recovery for the water and power costs of the project. It was not until the 1980's when the state started authorizing state general obligation bonds to help pay for water-related infrastructure that state and local funding responsibilities started to be blurred.

Furthermore, the CALFED Record of Decision (ROD) stated that a fundamental philosophy of the CALFED Program is that costs should to the extent possible, be paid by the beneficiaries of the program actions. The Bay-Delta Authority issued a Finance Plan in 2004 that attempted to implement the beneficiary pays principle for some programs. However, this plan was not approved and has not been implemented to date and state funds have supported the majority of the CALFED program since 2000.

Chapter 8 of Proposition 50 (Water Security, Clean Drinking Water, Coastal and Beach Protection Act, 2002) allocated \$500 million to initiate a new Integrated Regional Water Management program. This program requires local water agencies to work together collectively to solve regional water problems. These grants only required a 10 percent funding match from the locals for construction of the projects. This program has provided incentives for regional cooperation, but has also further blurred the state and local role in funding water infrastructure improvements. A regional approach to water management is likely to improve water use efficiency in some regions, but this sort of approach is not appropriate for all parts of the state.

**Committee Questions:**

1. Please provide the Administration's rationale for a 50/50 split in the allocation of fee funding to locals and the State? Was this split made based on a determination of beneficiary pays?
2. What about regions of the state where regional water management does not make sense? Will these regions not receive any funding from the new fee even though they pay into the fund?

**2. Allocation of Fee Revenues** *(Prepared by Republican Caucus Staff)*

**Background:** One of the Governor's specific proposals for the funding of ongoing water projects in California is the creation of the California Water Resources Investment Fund. Contained within the 2006 bond act language is the imposition of a Water Resources Capacity Charge to be collected by water retailers on water users in California. This proposed levy is projected by DWR to raise \$5 billion from homeowners and businesses in the state over the ten year life of the combined bond acts (2006 & 2010).

The revenue allocation formula requires all funds collected by the State Board of Equalization (BOE) to be deposited into the "General Account." From there, the Controller's Office **continuously appropriates** 50% of the revenues to the State Investment Account and 50% to the 11 regional accounts, on a pro-rata basis [Pro-rata is defined as the percentage of contribution to the General Account will dictate the percentage of funds placed in the affiliated regional account.]

Of the 50% placed in the State Investment Account, all BOE, DWR, and the California Water Commission expenses will be taken from this appropriation. The funds that remain are to be divided between a 35% commitment of funds to provide funding for priority regional projects (presumably 11 such projects) and projects of "statewide significance."

For discussion purposes, the proposed distribution of the anticipated first year revenues (\$380 million) would appear to follow this model:

**Total Projected Revenue: \$380 million**

- a. 11 Regional Accounts = \$190 million [Divided by 11 regions, this would result in deposits to each regional account of \$17.3 million.]
- b. State Investment Account = \$190 million.
  - i. Minus 15% or \$28.5 million (5% for each allowable state agency) *[No exact figure is currently stated in the measure, so staff has used the 5% historical DWR figure for illustrative purposes.]*
  - ii. Minus 5% or \$9.5 million for the statutorily required "reserve" which would leave a balance of \$152 million. *(No exact figure is currently stated in the measure, so staff has used the 5% historical DWR figure for illustrative purposes.)*

On this hypothetical basis, \$53.2 million (the 35% mandatory allocation) would be subtracted to fund the "priority regional projects" (divided equally between the 11 regions means \$4.8 million would be available for each priority regional project). This would leave \$98.8 million for projects of "statewide significance" annually.

The current language allowing all accounts to accumulate interest earnings appears to be well thought out. Prior to the distribution of any funding from the regional investment accounts, the statutory language requires:

- DWR to establish and implement a plan to monitor and track integrated regional water management plan implementation and performance to demonstrate achievements associated with the expenditures from the investment fund;
- DWR must adopt regulations for the preparation of integrated regional water management plans and to review those regulations and the resulting plans with a wide variety of other state agencies;
- DWR must verify that integrated regional water management plans comply with *the yet to be developed regulations*;
- DWR must ensure that projects funded from a regional investment account are consistent with an integrated regional water management plan; and
- Requires DWR to establish a process to allocate funds on a competitive basis for each of the regional investment accounts – among all proposals meeting *the yet to be developed regulations*.

It should be noted that from the time Proposition 13, created the *Flood Protection Corridor Program*, in March of 2000, until DWR filed the Flood Protection Corridor Program Regulations approved by the Office of Administrative Law, more than three years had past (DWR filed the approved regulations with the Secretary of State on August 19, 2003.)

**The Governor's Bond** creates the California Water Resources Investment Fund (WRIF) and establishes a schedule for assessment of a water resources capacity charge that retail water suppliers in California must pay. The proposed assessment is estimated to provide \$380 million in the first year and ultimately \$5 billion over the lifespan of the two bond acts.

#### **Committee Questions:**

1. Will state agencies involved with the administrative elements of the WRIF be allowed to charge expenses and costs during the time when regulatory requirements are being developed?
2. Has DWR conducted any specific or detailed analysis involving the proportional benefit to specific retail water suppliers across the State and if not why not, given that a charge or “fee” should proportion the amount of the levy to any benefits conferred upon fee payers?
3. The programmatic definition of an “Applicant” contained in the Integrated Regional Water Management Program allows a broad range of entities, including “*A nonprofit organization qualified under Section 501(c)(3) of the United States Internal Revenue Code.*” Do these definitions ultimately mean that while retail water suppliers are the “source” of the WRIF, organizations such as the Nature Conservancy or other environmental organizations are allowed to compete for project funding authorized under the WRIF?

### **3. Tax vs. Fee.**

The primary purpose of a tax is to obtain general revenue for the government, while the primary purpose of a fee is to cover the reasonable costs of providing services or regulation for which the fee is charged. Taxes require approval by two-thirds of the Legislature to enact and fees require approval only of a majority of the Legislature.

The court case often cited as providing a distinction between fees and taxes is *Sinclair Paint Company v. State Board of Equalization*. This case found that a special tax excludes “any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes.” The decision also finds that charges allocated to the payer that bear a reasonable relationship to the payer’s

burdens or benefits conferred by improvements, are not ‘special taxes’ under article XIII A of the State Constitution. “In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted.”

The *Sinclair Paint* decision also described a two-part test to distinguish a fee from a tax. This test requires the government to prove: (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to the payer bear a reasonable relationship to the payer’s burdens or benefits from the regulatory activity.

**Governor's proposal:** The water resources capacity charge would be levied on retail water suppliers in the state based upon the number and types of water connection in each supplier's area. The individual water agencies would then be responsible for assessing the fee on their customers as they see fit. Fee revenue collected by state would be split evenly between regional projects and statewide projects consistent with Integrated Regional Water Management plans.

There is a question as to whether this fee establishes clear nexus between fees paid and services received, which would put into question whether the proposed fee is actually a fee or a tax. (Staff is awaiting a Legislative Counsel opinion on the issue.). This distinction is important in determining what vote requirement would be necessary to make future adjustments to the fee. The proposal currently requires a two-thirds vote of the Legislature since this is the requirement for approving general obligation bonds for the ballot.

**Committee Questions:**

1. As a stand-alone proposal, does the Administration believe that this constitutes a fee or a tax?
2. Historically, the *Sinclair* decision has been justified additional fees in order to mitigate damages or harm from past, present, or future activities. Is it the Administration’s position that *Sinclair* should now be used as rationale for imposition of fees to generate revenue?
3. Typically, a fee is justified by some service provided to the fee payer, along with the application of the element of proportionality relative to fee. Has the Administration undertaken an examination or analysis of the proportionality of the water connection fee, as it relates to the availability of funding for a fee payer’s regional projects?

**4. Delegation Fee/Tax Authority to the California Water Commission.**

One of the fundamental checks on the Executive branch of government is the Legislative branch’s power to impose fees and levy taxes. A review of state law finds that there are a limited number of cases where the Executive branch is allowed to adjust fees or taxes. In most cases the adjustment is only allowed to ensure they raise the amount of funds that has been appropriated by the Legislature.

The California Water Commission is an advisory commission that reports to the director of the Department of Water Resources. Statute requires the commission to approve the department’s regulations, and hold hearings and make recommendations regarding State Water Project development. The commission has not been active in this role over the past several years. Most recently the commission has had a limited role in lobbying on behalf of the state for federal appropriations. The current commission does not have the authority to set or adjust fee or tax rates. The Governor proposed eliminating this commission as part of the California Performance Review in 2005.

**Committee Questions:**

1. Why does the Governor's water bond propose to delegate to the California Water Commission the responsibility to change the rates for the California Water Resources Investment Fund, unless the Legislature acts within 60 days to deny the change?
2. If the California Water Commission chooses to increase the fees associated with the WRIF and thereby requiring the Legislature to draft, debate, and pass an urgency measure in order to stop the increase within 60 days, does the Administration believe that it has effectively "inverted" the requirement for 2/3's approval of funding measures?

**5. Overlap with Bond Programs**

**Background:** While the two bond acts provide a total of \$3 billion for integrated regional water management grants, the California Water Resources Investment Act also provides and estimated \$2.5 billion over ten years (from water resources capacity charge revenues) for essentially the same category of projects. From the proposal, it is unclear how these different funding sources will interrelate to meet the proposed objectives of the funds. Additionally, the justification for funding integrated regional water management projects from both and the capacity charge revenues, and for funding at the magnitude of \$5.5 billion, is unclear.

**LAO Comment: *Similar Programs and Projects Funded From Bonds and Water Resources Capacity Charge.*** While the two bond acts provide a total of \$3 billion for integrated regional water management grants, the California Water Resources Investment Act also provides an estimated \$2.5 billion over ten years (from water resources capacity charge revenues) for essentially the same category of projects. The justification for funding integrated regional water management projects from both bonds and the capacity charge revenues, and for funding at the magnitude of \$5.5 billion, is unclear.

**Committee Questions:**

1. Does the administration have a plan for how expenditures from the bond and the new fee will be prioritized?
2. Is there any intention to distinguish between bond-funded projects and fee-funded projects?
3. Is the fee intended to, in any way, provide a source for repaying the bonds?



## IV. Statewide Water Management

<b>Proposed Statewide Water Management Bond Funding</b> 2006: \$1 billion 2010: \$2.5 billion
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The Governor's bond proposal for water management purports to address "integrated regional water management and statewide water management priorities." These *statewide* priorities, however, are not clear, considering the proposal's emphasis on *regional* management and its broad description of potential projects.

### A. Connection to the Delta

**Background:** Since the 1950's, virtually all debate over California water policy has converged on the Delta, in one way or another. In the 1990's, the State struggled with the expanded role of the Federal Government in the Delta, due to the federal Endangered Species Act. As a result, the CALFED Bay-Delta Program addressed the water needs of regions that covered most of the state. Even recent debate regarding the Colorado River connected to the Delta, based on the effect of reduced Colorado River deliveries on Southern California demands for Delta water.

Recent water bonds have included funding for the Delta, with the last two designating funding specifically directed at the CALFED Bay-Delta Program. The importance of the Delta to statewide water management priorities has become common wisdom. The Association of California Water Agencies (ACWA), for example, identified improvement of Delta conveyance as the first priority action in its 2005 publication entitled "No Time To Waste: A Blueprint for California Water." As reflected in the Governor's recent programmatic review of the CALFED program, CALFED and the Delta still demand urgent resolution of the challenges facing the State. The four CALFED objectives – water supply reliability, ecosystem restoration, water quality and levee system integrity – have all suffered difficulty in the last year, calling for additional funding for the Delta's needs.

**Governor's bond** proposes funding allocations for Delta levees, but nothing specifically for any of the other three Delta objectives (*i.e.* water, ecosystem, quality). The bond's "preferences" for funding regional proposals include "attainment of one or more" of the CALFED objectives. In addition, the Statewide Water Management Program includes \$1.25 billion for surface storage proposals arising out of CALFED and an unspecified allowance for the resource stewardship and ecosystem restoration funding to go to Delta needs.

#### Committee Questions:

1. What assurances does this bond proposal offer to fund the needs of the Delta?
2. How will the regional water projects be linked to the Delta, particularly in reducing other regions' reliance on Delta waters?
3. How does this proposal reflect a high priority for addressing the Delta's urgent needs?

### B. What Are "Statewide Water Management Priorities?"

**Background:** Since the SWP first started delivering water from the Delta to Southern California, there has been some tension in defining regional versus statewide interests in California water policy. The CALFED Bay-Delta Program's Record of Decision adopted a strategy based on implementing the Program's projects at the regional level. That strategy assumed the theory that, by each region improving its own self-sufficiency, demands on the

Delta would decline. Therefore, the statewide interests in the Delta would be addressed by regional actions, but that statewide interest would remain an important factor in making State water policy decisions. The 2005 draft California Water Plan adopted a similar approach for addressing California's water needs, with an emphasis on integrated regional water management. It is unclear, however, whether the State's assumption that addressing each region's needs would address the statewide interest in water management has proven true. The line between the regional interest and the statewide interest has blurred.

**Governor's bond** proposes spending \$6.5 billion on “integrated regional water management and statewide water management priorities.” It creates a "Statewide Investment Account" to draw on the revenues from the proposed capacity charges for addressing statewide interests, including::

- payment of Board of Equalization costs for collecting the capacity charge
- State matching funds for federal drinking water funding
- "priority regional projects"
- emergency funding for remediation of groundwater contamination
- "water infrastructure of statewide significance"
- other statewide programs significant to "integrated water management"

**Initiative bond** includes \$65 million in funds for the following:

- a. Evaluation of climate change impacts on flood and water systems
- b. Surface storage planning and feasibility (CALFED)
- c. Flood protection improvement
- d. Integration of flood control and water supply systems

### **Committee Questions**

1. Why do regional projects reflect statewide interests?
2. How does funding for cleanup of groundwater basins, which landowners and local communities generally claim as a local-only resource, support statewide interests?



<b>Proposed Regional Water Management Funding</b> 2006: \$1 billion 2010: \$2 billion
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## V. Integrated Regional Water Management

Integrated regional water management is a comparatively new concept in California water management. In the mid-1990's, Metropolitan Water District of Southern California began developing an "Integrated Resources Plan" (IRP) for its region. In the previous decade, MWD had begun developing its "Local Projects" program, which helped support its member agency projects that encouraged self-sufficiency, such as water recycling. The IRP moved MWD away from its historic model of acting only as a delivery agent for SWP and Colorado River water. It emphasized balance among the many kinds of Southern California water resources. While CALFED adopted this regional model, many regions do not enjoy a regional governance structure that would support an integrated regional water management plan similar to MWD's IRP. The Governor's bond proposal therefore breaks new ground in promoting such plans throughout California.

### A. Regional Water Governance: Who?

**Background:** Unlike the State's reliance on Councils of Governments (COGs) for developing regional transportation plans, the State generally has not established regional water management structures. Instead, local water agencies have formed regional agencies of some sort (*i.e.* JPA, metropolitan) – when they discover common interests. ACWA includes 447 public water agencies, most of them serving individual communities, particularly those with agricultural needs. Water agencies reflect great diversity, of supply, demand, type of use (ag/urban), staffing, and size.

Some regions have made more progress on regional water management than others. These "regions" may be based on watersheds, counties, or metropolitan areas. The regional agency may have any number of authorities, ranging from mere "coordination" to operation of regional water infrastructure. What works in one region may not serve the needs of other regions. It is not unusual for conflicts to arise within a region when there is competition for limited resources (financial or hydrological). Moreover, surface water management may have no connection to groundwater management, which some regions continue to resist.

**Governor's bond** does not create any regional water management structures, but is intended to provide financial incentives for their creation. The proposal also is unclear in defining regions. It allocates specific funding to 11 regions: North Coast, San Francisco Bay, Central Coast, LA/Ventura, Santa Ana River, San Diego, Sacramento River, San Joaquin River, Tulare Lake, Lahontan, and Colorado River Basin. It also identifies hydrologic regions, which are not identical to the listed regions. For example, the bond specifies that the South Coast Hydrologic Region shall be split into three parts and the north and south Lahontan regions will be combined, but these regions are not necessarily consistent with the listed regions.

### Committee Questions:

1. How does the bond proposal apply existing regional water management structures? Los Angeles and Ventura, for example, are in different basins and MWD, which includes parts of both counties, includes other basins.
2. How will the regions be able to submit proposals without any regional water governance?
3. Does the bond proposal anticipate that the State will create some form of regional water governance? Will COGs be used? How will the regions be defined?

4. How can "disadvantaged communities" and small water agencies afford to participate in regional water management?
5. How will DWR's regulations defining integrated regional water management plan affect the development of regional water governance?

## **B. Development of Integrated Regional Water Management Plans: What?**

**Background:** Few regions today have integrated regional water management plans. Southern California has made the most progress because of its long history of regional water cooperation through MWD. For many regions, water agencies only recently have begun the long dialogue about how to resolve water challenges with their neighbors. Some regions, however, have made progress toward developing regional plans, including smaller areas like Yolo County.

The State only recently has proposed development of and greater State reliance on regional plans for water management. In the last decade, the Legislature passed laws requiring urban water management plans, by individual urban water agencies. In 2000, CALFED adopted a regional strategy. In 2002, Proposition 50 included funding for regional plans, which has provided substantial incentives for water agencies to start talking to each other. DWR has issued grants for several regions in the last few years. Just last year, DWR issued a draft of the latest California Water Plan, which proposed substantial reliance on regional water plans.

### **LAO Comment: *Integrated Regional Water Management to Guide Funding Allocations.***

Much of the funding in the two bond acts and from the new California Water Resources Investment Fund is to be allocated on a regional basis to projects that are consistent with "integrated regional water management plans." The bill leaves it to DWR to adopt regulations to provide definition for the specific development and content of these plans, although the bill does provide some general parameters.

**Governor's bond** includes \$3 billion in bond funds for integrated regional water management projects. (A portion of the proposed water resource investment fund also would go toward such projects.) It requires DWR to adopt "regulations for the preparation of integrated regional water management plans," which shall include consideration of all resource management strategies in Bulletin 160-05, performance measures, an integrated, multi-benefit approach, and standards for developing regional priorities. It also requires that agencies participating in the regional proposal submit agricultural and urban water management plans. If regions seek support for groundwater storage projects, then they must adopt a groundwater management plan.

**SB 153 (Chesbro)** proposes \$200 million for integrated regional water management.

**Initiative bond** includes \$1 billion in grant funds, divided regionally in a manner similar to the Governor's proposal. Unlike the Governor's proposal, the IRWM program in the initiative is based closely on the existing Prop 50 Chapter 8 program as interpreted by the current DWR guidelines.

### **Committee Questions:**

1. Does DWR have a model for regional water management plans (e.g. MWD's IRP) that will help shape its regulations for developing regional plans?
2. Have some regions already begun development of regional water plans? If so, did you define the regions to encompass those areas that are already working together?

## C. Equity Issues

Adopting a regional strategy for addressing statewide interests inherently raises issues of equity, due to the diversity of economics, hydrology and water use, both among and within regions. While these issues may be inevitable, there may be ways to address such issues that eliminate or, at least, minimize any injustice.

### 1. Inter-Regional

**Background:** The diversity in water management is perhaps most obvious when considering inter-regional differences. Today, Southern California and the Bay Area are almost exclusively urban, with the last vestiges of agriculture quickly disappearing. In contrast, the Central Valley – with some significant exceptions – uses its water for agriculture. The water falls in the north and is used in the south. The robust technology economies – with higher incomes and housing prices – lie in the urban regions, while agriculture – which has suffered in recent years – lies in or adjacent to our rural communities. The ability and willingness to pay the full value of water also creates a divide between regions.

Urban regions will pay the bulk of the connection charge/fee under the Water Resources Investment Fund, but it is unclear whether they will receive the same proportion of benefits, despite the allocation of a portion of fee revenues back to the regions that paid them. The City of Los Angeles, for example, estimates that it will pay nearly \$36 million annually. The average monthly customer bill will rise by \$3 to \$29.26, an 11.4% increase. The City's representatives assert that the fee is regressive. In addition, they have questioned whether the fee revenues will support the kind of urban water use conservation that they have funded on their own for the last few decades, considering that the flat connection charge provides no incentive for conservation because the fee is not based on volume of use.

**Governor's bond** distinguishes between regions, making different funding allocations and raising different amounts of funds from the proposed capacity charge. Because the capacity charge is based on water connections and not volume of water used, urban water agencies will pay the lion's share of the charges but agricultural agencies will continue to use the lion's share of the State's water resources. The proposal attempts to address this apparent inequity by returning fee revenues to the regions in proportion to their fee revenue generation.

#### Committee Questions:

1. How will the capacity charge relate to water use?
2. How will the proposal address inter-regional inequities?
3. How were the bond funding allocations determined?

### 2. Environmental Justice

**Background:** Historically, there has been unequal enforcement of environmental, civil rights, and public laws; differential exposure of minority and low-income populations to health risks in the home, school, neighborhood, and workplace; and, faulty assumptions by government agencies and private entities in calculating and assessing risks to minority and low-income populations. In addition, discriminatory zoning and land use practices and exclusionary policies and practices have limited participation by minority and low-income residents in governmental processes.

Today, California law requires "the fair treatment of people of all races, cultures and income with respect to development, adoption and implementation of environmental laws, regulations

and policies". (Government Code Section 65040.12) However, a recent Environmental Working Group report found that according to US EPA, state and local agency data that many Californians are exposed to contaminants in their drinking water above health-based limits. Among the most impacted communities are low-income communities and communities of color. Also it should be noted that bonds are often viewed as 'a regressive tax', by many members of the environmental justice movement. They generally feel that bonds and other fee type mechanisms often place an unfair burden on low-income communities and communities of color.

**The Governor's Bond** provides funds for a variety of water management projects. While the language does include a definition of 'disadvantaged community', it is based only on median income level and does not take into account other factors often associated with negatively impacted communities. It also does not spell out a process that will allow citizens, including those in areas with existing environmental justice concerns, to participate in the decisions necessary to implement this bond. This poses a risk in California's quest for environmental justice.

The proposed capacity charge also may lead to inequitable outcomes. It is generally regressive because it charges the same amount, regardless of income. So, low-income homeowners with a modest house will pay the same as wealthy owners of mansions. In addition, large agricultural landowners will not pay much more, despite their more substantial water use. While the charge proposal allows water agencies to obtain a reduction in total charges by exempting customers with lifeline rates, there is no indication how many agencies have such lifeline rates. Moreover, the small, rural agencies serving low-income communities are least likely to be able to afford to determine who should have a lifeline rate.

#### **Committee Questions:**

1. How do we ensure an adequate public participation process in developing water infrastructure?
2. How will the regional water management approach assist with getting funds to the areas that need assistance most? It is often the low income areas and areas with other challenges that do not have the resources to undergo efforts to regionalize.
3. Can we ensure that this bond will not be regressive, and place the burden for repayment on the citizens of California that can least afford it?

### **3. Indian Tribes**

**Background:** In recent years, attention to the water resource needs of California Indian tribes has increased. For historical reasons, California has more than 100 federally recognized Indian tribes. California's Native American Heritage Commission recognizes additional tribes. There is great diversity among the tribes as to interest and concern about water issues, with some tribes enjoying a direct connection (either physically or culturally) to California's water resources.

In the CALFED Record of Decision, the Federal Government – and the State – made a commitment to assess CALFED impacts on tribal government rights and concerns. They also committed to consult with affected federally recognized tribes on a "government-to-government" basis. The most controversial tribal water issue relates to the expansion of the Federal Government's Lake Shasta, and its effect on the Winnemem Wintu tribe, which the Federal Government does not recognize. To the extent that the State funds construction or improvement of additional water infrastructure, there may be a need to address the effects on California's Indian heritage.

**Governor's bond** does not address how water infrastructure will affect Indian tribes.

**Committee Questions:**

1. Should any water infrastructure bond include provisions that require consultation with Indian tribes identified by the Native American Heritage Commission, consistent with the provisions of SB 18 (Chapter 905, Statutes of 2004)?

## VI. Water Issues

### Proposed Funding for Water Quality

2006: \$250 million

2010: \$500 million

### A. Water Quality

**Background:** A Harris Interactive poll published in October 2005 found that Americans rank water pollution as the number one environmental concern facing the country, topping global warming, ozone depletion, and air pollution. (The Harris Poll 2005) This is a legitimate concern given numerous studies show that a majority of California is exposed to contaminants in their drinking water on a regular basis. For example, a recent report by the Environmental Working Group (EWG) found that, according to state and local water district records, 145 contaminants were found in the tap water from 1998 to 2003.

There are distinct communities and small water systems that do not have safe clean drinking water which complies with state and federal drinking water requirements. These systems need to be upgraded to remove a wide array of contaminants that pose significant health risks including arsenic, perchlorate, nitrates, nitrites, and tetrachloroethylene.

In its most recent national Water Quality Inventory, US EPA found that 45% of lakes and 39% of streams and rivers are "impaired," making them unsafe for drinking, fishing, or even swimming in some cases. (EPA 2000). Source protection, mitigation for polluted runoff from farms, and urban and sprawl areas, which collectively account for 60 percent of water pollution is woefully insufficient. By failing to keep our rivers and reservoirs clean, water utilities must have treatment capacity and capabilities to decontaminate water that is polluted with industrial chemicals, factory farm waste, sewage, pesticides, fertilizer, and sediment.

**Governor's Bond** includes \$9 billion for a variety of water management issues, including water quality. It allocates \$750 million to water quality. The current broad language in the bills authorizes this money for these activities, but specifics are lacking.

**Initiative bond** contains funding for the following water quality programs:

- |                                     |               |
|-------------------------------------|---------------|
| a. Clean Water Revolving Fund       | \$50 million  |
| b. Groundwater pollution prevention | \$60 million  |
| c. Delta water quality projects     | \$130 million |
| d. Agricultural wastewater cleanup  | \$15 million  |
| e. Stormwater pollution prevention  | \$90 million  |
| f. Clean Beaches program            | \$90 million  |

In addition, the initiative bond includes a total of \$240 million for safe drinking water projects, divided as follows: \$180 million for small community drinking water system improvement grants, an additional \$10 million for emergency safe drinking water projects and \$50 million for the Safe Drinking Water Revolving Fund.

### Committee Questions:

1. Are the criteria for funding projects adequate to ensure that the highest priority water quality issues are addressed?
2. How do we ensure that existing water quality issues are addressed with a portion of these funds? The focus on flood control in the bond seems to shift attention away from the serious existing water quality problems. There are numerous small low-income



- communities in the state who simply cannot afford to upgrade to adequate drinking water treatment systems or who cannot afford a sewer system to treat their sewage.
- Does the bond address the need to protect current water supplies? With so many water supplies already compromised, efforts to reestablish the quality of those supplies as well as protect additional supplies are critical.

## B. Water Use Efficiency: Conservation and Recycling

**Background:** The last two decades have seen a growing emphasis on water use efficiency, including greater use of water conservation and recycling. A 1992 federal law required Central Valley Project water agencies to adopt water conservation plans. As water has become more expensive, local water agencies have made aggressive efforts to use their limited water resources more efficiently. For many years, the SWRCB has administered a grant program that supports water recycling projects. The 2000 CALFED Record of Decision supported substantial investment in water use efficiency projects. As a result, a 2005 report noted that Southern California today uses less water overall than in 1970. ("Water for Growth," Pacific Policy Institute of California, 2005)

**Governor's bond** includes water conservation and recycling among the projects that may be funded through integrated regional water management programs, although there is no specific allocation for such programs.

### Committee Questions

- Does the Governor's proposal explicitly promote water use efficiency and recycling?
- Should a particular amount of funding be allocated for conservation and recycling?
- Why is there no funding for the SWRCB's existing water recycling program?

## C. Water Storage

### Proposed Funding for Storage

2006: \$250 million

2010: \$1 billion

**Background:** Most of California's surface water storage facilities were built by either the Federal Government or local agencies. In the last decade, Contra Costa Water District and the Metropolitan Water District have built significant reservoirs with their own resources. In contrast, the Legislature has approved only three State water storage projects:

Project	Year	Status	Costs Paid By:
Central Valley Project	1933	Built by Federal Government	Water users
State Water Project	1959	Built by State	Water users
Los Banos Grandes	1984	Approved but never built	Water users

In each case, the State has required water users to pay for these state-authorized facilities. The State, however, has provided funds for fish/wildlife/recreation enhancements – after the demonstration of the enhancements.

In the last 25 years, state and local agencies increasingly have turned to groundwater for storage. The most cost-effective surface water reservoir sites were constructed long ago. Certain groundwater basins have offered attractive alternatives in terms of cost, availability and environmental costs/benefits. The most prominent groundwater storage project is the Kern County Water Bank, operated by Kern County Water Agency. This project started as a State-sponsored element of the SWP, called the Kern Fan Project. In recent years, the State, through



the CALFED Bay-Delta Program, has supported a variety of local efforts to develop groundwater storage projects. DWR estimates that these projects will produce 300-350,000 acre-feet of storage, or enough water for approximately 600,000 homes. Addressing water storage issues therefore requires broader analysis of the costs and benefits of various kinds of water storage that will best meet the needs of a growing state.

#### **D. Surface Storage: Part II** *(Prepared by Republican Caucus Staff)*

**Background:** The CALFED Record of Decision (ROD) has identified five potential surface storage reservoirs that are being investigated by the California Department of Water Resources, U.S. Bureau of Reclamation, and local water interests. The five surface storage investigations are:

- Shasta Lake Water Resources Investigation (SLWRI)
- North-of-the-Delta Off-stream Storage (NODOS)
- In-Delta Storage Project (IDS)
- Los Vaqueros Reservoir Expansion (LVE)
- Upper San Joaquin River Basin Storage Investigation (USJRBSI)

In DWR's Bulletin 160-05, April 2005 Draft Release, the estimated capital cost for developing the individual surface storage projects identified in the CALFED ROD could range from \$180 million for the smallest Shasta Lake Expansion, to \$2.4 billion for Sites Reservoir with the most extensive conveyance facilities; the least expensive configuration of Sites Reservoir is estimated to be about half as much as the most expensive.

According to draft release, the provision of "sufficient and stable" State and Federal funding are critical to successful completion of the feasibility and environmental studies for the five projects. The draft release also states that, *"Given the estimated funding shortfall, one or more of the studies, of lesser determined priority, may have to be delayed or even terminated unless they are provided specific financial support."*

In the draft release, DWR, Reclamation, and CALFED estimated funding necessary to complete the five investigations at \$64.3 million. The draft release also estimated that \$29.2 million remained available from Proposition 50 bond proceeds to support surface storage investigations. Purportedly, the Federal budget for 2005 and the President's proposed budget for 2006, amount to approximately \$13.5 million, leaving an unmet need of \$21.6 million.

Figures contained in the DWR's draft release show that we would need to offset *"...an additional 3.6 million acre-feet of urban and environmental water demand per year with a combination of management strategies to reduce demand, improve system efficiency, and redistribute and augment supplies."* It is significant that the draft release calls for "management strategies" that don't include the creation of new sources of supply as an integral part of planning for the anticipated population growth facing California.

Members should also have an historic framework to understand the current discussions involving the issue of surface storage. During the negotiations surrounding the content of Proposition 204 in 1996, funding for surface storage was integral to those discussions and it ultimately was offered that funds for those types of projects were to be added to the "next bond package."

Since that time, four additional bonds totaling more than \$10 billion have been placed before voters for a wide range of water related purposes. None have included funding for construction

of surface storage projects. Notably, the five bond packages have included more than \$3.5 billion (approximately 30% of bond funding), dedicated to water supply, water pollution, water conservation, and water reclamation/recycling programs. At the same time, surface storage “studies” have received \$50 million (approximately ½ of 1% of bond funding).

**The Governor's Bond** allocates \$1.25 billion for the purpose of water storage development and surface storage construction (2006 - \$250 million to support development of water storage and 2010 - \$1 billion to fund a state cost share for construction of one or more of the surface storage projects being investigated by DWR under the CALFED Bay-Delta Program.)

### Committee Questions

1. If, according to the Bulletin 160-05 draft release only \$21.6 million is needed to complete surface storage investigations, why does the 2006 bond act require allocation of \$250 million?
2. The Bulletin 160-05 draft release would seem to indicate that potential costs for surface storage construction will exceed \$3 billion for at least two facilities, so will \$1 billion be sufficient to cover the “public benefit” costs of their construction?
3. Why is funding for construction placed in the 2010 bond act and not the 2006?

## E. Ecosystem Restoration and Multiple Benefits

<p><b>Proposed Funding for Resource Stewardship/Ecosystem Restoration</b></p> <p>2006: \$200 million</p> <p>2010: \$500 million</p>
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**Background:** Prior to 1990, California’s major water projects were managed primarily for water supply, with little effort or resources dedicated to related issues, such as ecosystem health or water quality. However, in the early 1990’s, a significant shift took place in the management of California’s water resources. That shift happened as a result of changing public needs, public awareness, court rulings and listings under the ESA of species such as the winter run Chinook salmon and the Delta smelt. This new paradigm emerged for another reason. Water managers and decision-makers recognized that programs designed to restore healthy ecosystems can indirectly reduce regulatory burdens on water projects, strengthening water supply reliability. Similar realizations regarding water quality have contributed to a movement toward balanced funding for water policy and natural resources management.

In 1992, Congress passed the Central Valley Project Improvement Act, which established ecosystem health as a co-equal objective of the federal Central Valley Project. The CVPIA dedicated a block of water to ecosystem restoration and established a federal restoration fund, funded by contributions from CVP water and power customers.

The CALFED process also reflected this new approach. The four co-equal objectives of the CALFED Program are water supply reliability, water quality, ecosystem restorations and levee system integrity. Through the CALFED Program, agencies have created separate water supply and ecosystem restoration programs, but agency coordination has increased dramatically. Water projects and fishery agencies no longer see themselves as adversaries, but rather as collaborators seeking to balance the management of water project operations, water supply projects and restoration programs to achieve multiple benefits. The Legislature codified this balanced approach in the California Bay-Delta Authority Act.

Increasingly, during this time, water bonds such as Propositions 204, 13 and 50, as well as the state budget, emphasized multiple objectives, agency coordination and balanced funding for all relevant agencies. These bonds included funding for DWR, DFG, State conservancies, State

Parks, the SWRCB and DHS. Congress also adopted this balanced approach in the projects and funding authorized by the CALFED Bay-Delta Authorization Act of 2004. Both the state and federal CALFED authorizing acts include multiple objectives, separately funded water supply and ecosystem programs, agency coordination and a requirement for a balanced program.

**Governor's Bond** allocates \$700 million (\$200/2006; \$500/2010) for "resource stewardship and ecosystem restoration," but all to DWR. It also allows for similar projects to be funded through integrated regional water plans. It therefore appears that all these programs are designed with water supply as the primary objective. While DWR is required to consult with DFG, it is unclear whether DFG would receive funding for its duties in protecting the public trust. The proposed bonds and fees do not include funding specifically available to DFG or other agencies involved in ecosystem protection and restoration. This approach reflects a significant departure from the trend over the past 15 years toward coordinated but separate water supply and restoration programs, and balanced funding for all relevant agencies.

**Initiative bond** includes significantly more funds for the state's ecosystem restoration obligations related to water supply, including:

Bay-Delta NCCP	\$20 million
Coastal Salmon and Steelhead restoration	\$45 million
CalFed ERP	\$115 million
Colorado River QSA implementation	\$36 million
Lower Colorado MSCP	\$7 million
Salton Sea restoration	\$47 million
San Joaquin River	\$100 million

In addition, the initiative contains funds for other watershed and river restoration programs including Lake Tahoe, Sierra Nevada Conservancy, River Parkway Program, LA River, Santa Ana River, SF Bay, San Joaquin River Parkway, Santa Monica Bay, San Diego Bay, and others.

#### **Committee Questions:**

1. Would the current funding proposal enable DFG to achieve the ecosystem restoration milestones in the CALFED ROD?
2. Can you demonstrate how the current proposal would enable the CALFED Bay-Delta Program to remain in balance, as required by state and federal law?
3. Does the Administration propose to achieve the \$150 million per year in ecosystem restoration funding that is required by the existing Delta assurances for water users?
4. Does this proposal provide the Department of Fish and Game with the resources it needs to respond to and reverse the decline of the Delta ecosystem?
5. What is the Administration's proposal for funding the Environmental Water Account?

## **F. Watershed Management**

**Background:** In the last two decades, California water policy increasingly has emphasized the importance of addressing water problems with a watershed-wide approach. A 1986 appellate court decision ruled that the SWRCB was required to consider the impact on the Delta from water users throughout the Central Valley watershed – not just the state and federal water projects. In legislation, regulation and implementation, water resource experts have relied on watershed-wide solutions to resolve the State's most difficult water challenges – in water quality, water supply, flood management, or ecosystem health.

In 2002, Proposition 50 funded an Integrated Regional Water Management Program (IRWMP), to encourage local agencies involved in water supply, ground water management, and flood issues to prepare “integrated” plans. While “habitat protection and improvement” and other strategic broad-based needs are included on the list of water management issues to be addressed by these plans, water supply projects may dominate the IRWMP funding priorities because well-funded water agencies have the most resources to affect this integration process.

The statute and regulations adopted to implement IRWMP are silent regarding the definition of “integration.” Historically, “integration” has been narrowly interpreted by some water planners to mean simply coordinating the work of federal, state and local entities and to coordinate construction of water supply, treatment, and groundwater management projects. Some communities, however, have integrated planning for the purpose of watershed partnerships to create cooperative agreements between agencies and communities that link multiple projects to multiple benefits, including water supply, quality and habitat.

**Governor’s bond** includes "watershed management" among the types of projects under the resource stewardship category, which are eligible for funding as part of an integrated regional water management plan. It also includes a preference for projects that either resolve significant conflicts within a region or provide multiple benefits.

**Committee Questions:**

1. How can we ensure that regional water management plans improve water resource management throughout the watershed.
2. How can we better facilitate partnerships between communities and public agencies?
3. How will the regions address water management issues throughout the watershed?
4. How do the proposed preferences promote better watershed management?
5. How can we ensure full public participation in management of our watersheds?

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*The Senate Committee on Natural Resources and Water*  
*Report to the Conference Committee on Infrastructure Bonds*

*Recommendations For The Proposed Infrastructure Bonds*

*March 1, 2006*

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# 1. Introduction

Beginning January 24, 2006, and over the course of the following five weeks, the Senate Committee on Natural Resources and Water held weekly hearings on the Governor's proposed flood and water bond.

The Committee Chair, Senator Sheila Kuehl, set the tone at the first hearing, saying "The leadership of both parties in both houses has agreed that the relevant policy committees will hear the bond proposals, and Senator Perata has emphasized that the hearings should be substantive and should carefully consider the bond proposals because of their potential to affect every Californian."

Each week the Committee focused on only one or two issues.

The focus of the first hearing, on January 24, was the water bond in its entirety and the overarching policy questions raised by the Governor's proposal. The following week the Committee examined the flood aspects of the Governor's proposal. Next, on February 7, the Committee explored the issues raised by the regional water management provisions. The statewide water management provisions were the subject of the hearing the following week. The final hearing, on February 21, addressed the proposed water fee and the need for additional funds for the environment and natural resources.

Each hearing started with a presentation by the administration on the day's topic. Following extensive questions by the Committee, Senator Kuehl would then invite comments from a response panel. Each response panel was selected provide unique and expert opinion on the Governor's proposal. Panelists included:

- Richard Atwater, General Manager, Inland Empire Utilities Agency
- Stein Buer, Executive Director Sacramento Area Flood Control Agency
- Meg Catzen-Brown, Legislative Advocate, California Water Association
- Joe Countryman, Principal, MBK Engineers
- Peter Gleick, President, Pacific Institute
- Elizabeth Goldstein, President, California State Parks Foundation
- Martha Guzman, Legislative Advocate, California Rural Legal Assistance Foundation
- Marc Holmes, Public Member, California Bay-Delta Authority
- Steve Johnston, Director of California Strategic Initiatives, The Nature Conservancy
- Randeale Knouse, Special Assistant to the General Manager, East Bay MUD
- Betsy Marchand, Former Chairperson, State Reclamation Board
- Anne Notthoff, California Advocacy Director, Natural Resources Defense Council
- Randy Pool, General Manager, Sonoma County Water Authority
- Anthony Saracino, Director of Water Policy, The Nature Conservancy
- Tom Zuckerman, Co-Counsel, Central Delta Water Agency

In addition to the formal testimony, Senator Kuehl also invited public comment.



The Committee did not limit its inquiry solely to information presented at the hearings. Each week the Committee posed written questions to the administration examining critical policy issues associated with the Governor’s proposal. The administration typically responded to those questions in writing in about a week.

Committee and staff also received personal visits, letters, e-mails, and phone calls from various interest groups and private citizens, each espousing an opinion or comment on the proposed infrastructure bond.

The Committee recommendations contained in this report draw on this entire record.

## **The Recommendations**

As described in greater detail in the balance of this report, the Committee is recommending that the infrastructure bonds authorize a little more than \$8.0 billion for flood, water, and natural resources infrastructure investments.

### **\$8.0 B TOTAL FLOOD, WATER, & NATURAL RESOURCES INFRASTRUCTURE**

#### **\$2.1 B Flood Protection**

\$600 M	Project Levee & Facilities Repairs
\$400 M	Flood Control System Improvements
\$400 M	Delta Levee Subventions & Special Projects
\$500 M	Flood Control Subventions Program
\$100 M	Floodplain Mapping Program
\$100 M	Floodway Corridor Program

#### **\$0.5 B Regional Water Management**

##### **\$1.0 B Statewide Water Management**

\$350 M	Water Quality Protection & Improvement
\$250 M	CalFed Bay Delta Program
\$400 M	Ecosystem Restoration & Improvement

##### **\$4.4 B Natural Resources Infrastructure**

\$1,970 M	Neighborhood, Community, & Regional Parks
\$1,800 M	State Parks & Wildlife Protection
\$675 M	Clean Water & Coastal Protection

While it is critical to increase funds for these projects and programs, solving the problems addressed in the bond will require more than just money. The Legislature must act to ensure the proper priorities are set, the appropriate policies are in place, and that our institutions are capable of applying those priorities and implementing those policies. This is especially true for flood protection, but is also important for regional and statewide water management. Consequently, this report also identifies those policy areas that will require additional legislative attention.

## **This Report**

This report is organized as follows. Immediately following this introduction is a section that discusses the key policy principles that underlie the Committee's recommendations. Following that discussion are four major sections:

- Flood Protection
- Regional Water Management
- Statewide Water Management
- Natural Resources Protection

Within each of these sections, the report describes the Committee's recommendation, justifies that recommendation, and compares it to the Governor's bond proposal.

Following the four sections describing the Committee's flood, water, and natural resources infrastructure bond proposal is a brief discussion of the Governor's proposed Water Resources Investment Fee.

The appendices contain recommended language for the flood and water sections of the bond and the natural resources section of the bond.

## 2. Bond Financing Principles

In order to determine how to use bond financing to meet statewide goals, it is important to set forth some fundamental principles. The Committee based its recommendations for the flood, water, and natural resources infrastructure bonds on the following principles:

### State Funds For State Responsibilities

The State has specific responsibilities regarding floods, water, and natural resources. These include:

- Enhancement of Public Trust Resources  
Enhancement denotes actions beyond those required under existing regulatory requirements. This responsibility almost always requires the use of bond funds.
- Public Health & Safety  
The Legislature has delegated this responsibility to cities, counties, and special districts. However, if a local government fails to meet this responsibility, it is the duty of the state to step in and correct the problem. Sometimes, but not always, this requires the use of bond funds.
- Establish State Resources Goals & Remove Impediments To Achieving Those Goals  
The Legislature sets resources goals and policies by enacting statutes and creating new programs. There may, however, be impediments to achieving the goals, such as lack of experience in working towards that goal, institutional conflicts, or fear of liability. Sometimes, but not always, bond funds may be used to aid in planning or first steps to help remove those impediments.
- Establish & Enforce Rules of Behavior  
While actually establishing and enforcing the rules of behavior rarely requires the use of bond funds, occasionally bond funds are necessary to fund research or the completion of products necessary to support the establishment or enforcement of rules of behavior.

### Subsidies Should Be Avoided

Providing state funds for things that are not a state responsibility should be characterized as a subsidy, and should be avoided. Two key reasons for avoiding subsidies are:

- Subsidies Mask Economic Price Signals  
Economists would argue this leads to less than optimal resource allocation.
- Subsidies Violate The Beneficiary Pays Principle  
If the state is not the responsible financial party, then someone else will be.

## **Bonds Should Aid in the Implementation of Policy, Not Create Policy**

Bond acts authorize the issuance of public debt to further public policy. There are many reasons why it is best to avoid setting public policy in the bond acts themselves.

- Water Resources Policy Is Constantly Evolving  
Policy set in a bond is often too static. This is evidenced by the large amount of “orphan” bond funds; i.e., bond funds that were authorized but unused 10 or more years after authorization.
- “Solutions” To Problems Are Changing  
There is a new awareness that traditional solutions to flood risk and local and regional water problems may no longer be appropriate. Resolving these problems will require research and extensive policy debate on the outcomes of that research. Bonds should be designed to allow flexibility to reflect new and better solutions.
- Bonds Should Be Flexible To Evolving Policy  
The legislative process is the appropriate way to change policies. To the extent possible, bonds should be drafted to allow policies to evolve and still provide the necessary funds.

## **Respect Separation Of Powers And The System Of Checks And Balances**

Bond acts should not be used to circumvent the constitutionally established roles of the legislative and executive branches.

- The Legislative Branch’s Power To Allocate Funds.  
One of the fundamental checks on the executive branch is the budget process. In that process, the role of the Governor is to develop and propose a budget; the role of the Legislature is to review the proposed budget, amend where necessary, and to appropriate the funds to implement the budget. Bond funded programs that are funded by continuous appropriations bypass the formal budget process with its inherent checks and balances system. Consequently, continuously appropriated bond programs should be avoided.
- Oversight and Transparency  
Another of the fundamental checks on the executive branch is the Legislature’s oversight. The Legislature’s ability to perform this function is greatly aided by requiring programs to be developed and implemented through open and transparent processes.

The Committee has endeavored to ensure that its recommendations conform to the bond financing principles set forth above.

### 3. Flood Protection

The Committee recommends that the infrastructure bonds authorize a total of \$2.1 billion for flood protection, as follows:

\$600 M	Project Levee & Facilities Repairs
\$400 M	Flood Control System Improvements
\$400 M	Delta Levee Subventions & Special Projects
\$500 M	Flood Control Subventions Program
\$100 M	Floodplain Mapping Program
\$100 M	Floodway Corridor Program

#### A. Project Levee & Facilities Repairs

##### **The Committee Recommends The Following:**

- That \$600 million dollars be available for appropriation by the Legislature for the immediate evaluation, repair, rehabilitation, reconstruction, or replacement of critical levees and other facilities of the State Plan of Flood Control, including, but not necessarily limited to, any of the following actions:
  - Repairing erosion sites and removing sediment from channels or bypasses.
  - Evaluating and repairing, rehabilitating, reconstructing, or replacing levees and any other facilities of the State Plan of Flood Control.
  - Completing a flood control system status report.
  - Implementing mitigation measures for any project undertaken under these provisions.
  - Funding the state share involved in developing one or more Natural Communities Conservation Plans (NCCP) or joint Natural Communities Conservation Plan/Habitat Conservation Plans (NCCP/HCP) for flood management projects.
- That the Legislature give highest priority to funding actions that protect one or more of the following:
  - The current population protected by a levee or flood management facility.
  - The public safety infrastructure protected by a levee or flood management facility. Public safety infrastructure is defined as street and highway evacuation routes, hospitals, and other infrastructure necessary to respond to a flood emergency.
- That the reclamation board prepare a report to the Governor and Legislature on the status of the state flood control system not later than December 31, 2008. For the purposes of preparing the report, the reclamation board shall inspect the project levees and review available information on all of the following:
  - A description and the location of all facilities of the State Plan of Flood Control, including, but not limited to, levees, canals, weirs, bypasses, and pumps.

- An evaluation of the performance and deficiencies of project levees and other facilities of the State Plan of Flood Control.
- A prioritized list of actions necessary to improve the performance and, to the maximum extent practicable, eliminate deficiencies of project levees and other facilities of the State Plan of Flood Control.
- That the reclamation board use the following criteria for establishing its priority list:
  - The likelihood of failure by the levee or facility.
  - The current population protected by the levee or facility.
  - The public safety infrastructure protected by the levee or facility.
- That the reclamation board consider both structural and nonstructural methods for improving the performance and eliminating deficiencies of project levees and other facilities of the State Plan of Flood Control. The reclamation board should attempt to meet multiple objectives by taking actions that will:
  - Reduce risk to human life, health, and safety from flooding.
  - Promote natural dynamic hydrologic and geomorphic processes.
  - Reduce damages from flooding.
  - Increase and improve the quantity, diversity, and connectivity of riparian, wetland, floodplain, and shaded riverine aquatic habitats, including agriculture and the ecological values of these lands.
  - Minimize the flood management system operation and maintenance requirements.
  - Promote the recovery and stability of native species populations and overall biotic community diversity.
- That the report become the basis for developing and implementing one or more NCCP or NCCP/HCP for flood management projects.
- That the Department of Fish and Game, the state board, and regional water quality control boards be authorized to expend funds from the bond for conducting and expediting any environmental reviews necessary for any activity funded by this article.
- That the reclamation board develop guidelines for matching funds to implement these provisions.

Draft language to implement these recommendations is in the attached *Recommended Water Bond*, beginning on page 6, under *Article 1. Project Levee and Facilities Repairs*.

### **Justification**

In the near term, our best strategy for reducing flood risks is to correct known deficiencies and immediately develop a longer term plan for future improvements.

In November 2005, at a hearing before the Assembly Water, Parks and Wildlife Committee (AWP&W), the Department of Water Resources (DWR) estimated it would

cost at least \$600 million, and possibly \$1.0-1.5 billion to repair Central Valley levees to their original design. While federal funds might become available to aid in financing these repairs, the Committee believes it would not be prudent to delay repairs while waiting for federal fund authorizations.

Even with the funding provided by this bond, correcting all the deficiencies in the flood management system will take time. So, priorities are in order. The Committee recommends that the highest priority for funds should be protecting public safety and the infrastructure necessary to ensure public safety.

One of the recommendations of DWR's flood white paper titled *Flood Warnings : Responding To California's Flood Crisis*, was to "[d]evelop a strategic long-term flood control plan that would dictate improvements over time to provide high levels of flood protection for urban areas and to restore ecosystem functionality." Developing such a strategic plan will take time. The Committee recommends that development of such a plan should start immediately by the development of the flood system status report and priority investment list.

The administration testified that state environmental regulations generally were not an impediment to timely restoration actions. Nonetheless, there are things that can be done within the existing state environmental regulatory system that would help reduce time and costs. The Committee recommends that bond funds be made available to expedite state environmental reviews. The Committee also recommends that the flood system status report and priority investment lists become the basis for developing one or more NCCP or NCCP/HCP for flood management projects.

### **Other Necessary Actions**

The project levee and facilities repairs funds are meant to address the immediate risks of flooding by correcting critically deficient levees and facilities and developing a prioritized plan for improving the flood management system. While important, solving the State's flood problems will require more than just money. A first additional priority must be to reform the reclamation board.

The reclamation board serves as both the planning and quality control agent for flood management in the Central Valley. Clearly, both planning and quality control have been lacking. In particular, the reclamation board has been either unable or unwilling to fulfill the quality control role. If we are to reduce flood risks in the Central Valley, we must restore the planning and quality control functions by:

- Strengthening the independence and resource capacity of the Reclamation Board.
- Clarifying and in some cases strengthening the Reclamation Board's powers and duties.
- Clarifying the relationship between the Reclamation Board, Department of Water Resources (DWR), Federal Agencies, and local flood management agencies.

This will require both statutory and budgetary actions by the Legislature.



### **Governor's Proposal**

This recommendation differs from the Governor's proposal in a number of aspects.

#### Funding:

- The Governor proposed \$210 million for these activities
- The Committee is recommending the full \$600 million identified by DWR in its testimony before AWP&W.

#### Allocations:

- The Governor proposed specific allocations for specific types of repair.
- The Committee is not recommending specific allocations. This way, the Legislature can ensure that funds are spent on the highest priority projects, regardless of category.

#### Matching Requirements:

- The Governor proposed specific and complex matching requirements.
- The Committee is not recommending specific matching requirements and, instead, directed the reclamation board to develop guidelines for matching rates through an open and transparent process.
- The Committee recognizes that some sort of financial policy reform, including cost sharing rules, may be necessary. However, that reform should be accomplished through separate legislation.

#### Indemnification:

- The Governor proposed that any local agency responsible for operating and maintaining the levee at or adjacent to the levee repair work shall indemnify and hold the state harmless from any and all liability for damages associated with the work.
- The Committee is not recommending such an indemnification requirement in the bond.
- The Committee recognizes that indemnification is an important policy question. However, that issue should be resolved through the regular legislative process.

#### Reclamation Board vs. DWR

- The Governor proposed funding rules that appeared to blur the roles and responsibilities of the reclamation board and DWR
- The Committee recommended funding rules consistent with current law.

## **B. Flood Control System Improvements**

### **The Committee Recommends The Following:**

- That \$400 million dollars be available for appropriation by the Legislature for improving or adding facilities to the State Plan of Flood Control to increase levels of flood protection for urban areas, related habitat restoration, and prioritized needs established in the flood control system status report.

- That the following projects be eligible for funding under this article:
  - Flood control improvements to Folsom Dam and for the authorized state cost share of a new bridge downstream from the dam.
  - The American River Common Features Project.
  - The South Sacramento County Streams Project.
  - The Enhanced Flood Response and Emergency Preparedness Project that will enhance flood emergency response by using an improved hydraulic data network in the central valley.
  - New high priority projects or improvements identified in the flood control system status report.
- That the Department of Fish and Game, the state board, and to regional water quality control boards be authorized to expend funds from the bond for conducting and expediting any environmental reviews necessary for any activity funded by this article.
- That the reclamation board develop guidelines for matching funds to implement these provisions.

Draft language to implement these recommendations is in the attached *Recommended Water Bond*, beginning on page 8, under *Article 2. Flood Control System Improvements*.

### **Justification**

At a November 30, 2005 hearing of the AWP&W, Leslie Harder, Acting Deputy Director of DWR, testified that it would cost roughly \$1 to 1½ billion to bring urban areas up to an acceptable level of protection. And, as more attention is brought to our ability to manage floods and flood risks, we find more instances where the risk is greater than previously recognized. For example, only two weeks ago, new engineering studies showed that the rapidly growing Natomas area of Sacramento may not have the one hundred year protection it was previously believed to have.

The Legislature has previously approved state funding for specific projects in the Sacramento Valley designed to improve the level of flood protection. The Committee recommends providing the funds necessary to complete those projects. In addition, the Committee recommends providing funding for new high priority projects or improvements identified in the flood control system status report.

### **Other Necessary Actions**

The flood control system improvement funds are intended to improve the level of flood protection. Again, improving the level of flood protection will require more than just money.

Under the *Paterno* decision, the state is potentially liable for flood damages behind project levees. The most cost effective way of reducing flood risk is to keep people from getting into harms way in the first place. However, the state has no role in determining

what is and is not allowed to be built behind vulnerable levees. If we are to ensure that local land use decisions do not increase the state's liability under *Paterno*, land use planning reform will be necessary.

Similarly, the liability risk for flood damage is tilted heavily towards the state, with some local governments having little or no exposure. Yet, decisions made by cities, counties, levee districts and other special governments can greatly affect the likelihood of a flood system failure. A more balanced shared responsibility for flood risk and flood damages would force all governmental agencies to agree on similar interests in resolving flood risk problems.

Resolving these issues will require statutory actions by the Legislature.

### **Governor's Proposal**

#### Funding:

- The Governor proposed \$200 million for flood management improvements.
- The Committee is recommending \$400 million for flood management improvements.

#### Eligible Projects:

- The Governor proposed funding a specific set of projects previously authorized by the Legislature.
- The Committee is recommending adding funding for new high priority projects or improvements identified in the flood control system status report.

#### Allocations:

- The Governor proposed specific allocations for specific projects.
- The Committee is not recommending specific allocations.
- The Committee recognizes that the previously authorized projects each have projected funding needs. However engineering cost estimates often change. By not having specific project allocations, the Legislature can ensure funds are appropriately directed to projects.

#### Matching Requirements:

- The Governor proposed specific matching requirements
- The Committee is not recommending specific matching requirements and instead directed the reclamation board to develop guidelines for matching rates through an open and transparent process.
- The Committee recognizes that that some sort of financial policy reform, including cost sharing rules, may be necessary. However, that reform should be accomplished through separate legislation.

#### Indemnification:

- The Governor proposed that any local agency responsible for operating and maintaining the levee at or adjacent to the levee repair work shall indemnify and hold the state harmless from any and all liability for damages associated with the work.

- The Committee is not recommending such an indemnification requirement in the bond.
- The Committee recognizes that indemnification is an important policy question. However, that issue should be resolved through the regular legislative process.

## **C. Delta Levee Subventions & Special Projects**

### **The Committee Recommends The Following:**

- That \$400 million dollars be available for appropriation by the Legislature to reduce the risk of catastrophic levee failure in the delta, and to be allocated as follows:
  - \$120 million dollars for implementation and administration of the Delta Levees Maintenance Subventions Program.
  - \$280 million dollars for implementation and administration of the Delta Special Flood Control Projects Program.
- That the minimum matching requirement for bond funds under the Delta Levees Maintenance Subventions Program be waived as follows:
  - DWR shall base the matching rate on the information developed by the comprehensive study, required under current law, of the agency's ability to pay for the cost of levee maintenance or improvement.
  - The Legislature may amend this section upon DWR completing and the California Bay Delta Authority (CBCA), or its successor, adopting the "Delta Risk Management Strategy."
- That the Department of Fish and Game, the state board, and regional water quality control boards be authorized expend funds from the bond for conducting and expediting any environmental reviews necessary for any activity funded by this article.

Draft language to implement these recommendations is in the attached *Recommended Water Bond*, beginning on page 10, under *Article 3. Delta Levee Subventions and Special Projects*.

### **Justification**

In the near term, our best strategy for reducing flood risks is to correct known deficiencies and immediately develop a longer-term plan for future improvements.

On November 1, 2005, the Senate Natural Resources and Water Subcommittee on Delta Resources, the Senate Transportation and Housing Committee, and the Joint Committee on Emergency Services and Homeland Security held a joint hearing titled "Thinking the Unthinkable – Are We Ready for Major Floods in the Delta?" At that hearing, Lester Snow, the Director of DWR testified that a 6.5 magnitude earthquake could collapse 30 levees, flood 16 delta islands and damage 200 miles of additional levees. He said 3,000 homes and 85,000 acres of farmland would be flooded. Damage could reach \$30 billion

over five years. In addition, it might cost \$ 3 to 5 billion to make critical Delta levees reasonably resistant to flood and seismic events.

The CBDA and DWR have already begun developing a plan to address the flood risk in the delta through the “Delta Risk Management Strategy.” That strategy is expected to be completed in about two years. While the CBDA and DWR work on the Delta Risk Management Strategy, the Committee recommends increased funding for both the Delta Levees Maintenance Subventions Program and the Delta Special Flood Control Projects Program. However, some levee districts are already having a difficult time meeting the matching requirements of the subvention program. So to ensure that delta levees are aggressively maintained, the Committee is recommending reducing or eliminating the minimum matching requirements for subventions funded by the bond for those districts that can demonstrate financial need.

#### **Other Necessary Actions**

Once the Delta Risk Management Strategy is completed by DWR and adopted by the CBDA, it may be necessary to amend the program requirements under Delta Special Flood Control Projects Program or the Delta Levees Maintenance Subventions Program.

#### **Governor’s Proposal**

Funding:

- The Governor proposed \$210 million for delta levee maintenance and improvements.
- The Committee is recommending \$400 million for delta levee maintenance and improvements.

Matching Requirements:

- The Governor proposed to maintain the matching requirements under existing law.
- The Committee is recommending eliminating the minimum matching requirement for delta levees maintenance subventions funded by the bond.

### **D. Flood Control Subventions Program**

#### **The Committee Recommends The Following:**

- That \$500 million dollars be available for appropriation by the Legislature to reimburse local governments for the state’s share of local flood control project costs.

Draft language to implement these recommendations is in the attached *Recommended Water Bond*, beginning on page 11, under *Article 4. Flood Control Subventions Program*.

#### **Justification**

Flood control subventions reimburse local flood management agencies for the state share of legislatively authorized flood control projects.

According to DWR's flood subventions web site, the estimated state share of funding for approved projects through FY 2009/10 is \$501.3 million. To ensure that these previous commitments are met, the Committee is recommending full funding of the flood control subventions program.

**Other Necessary Actions**

None

**Governor's Proposal**

Funding:

- The Governor proposed \$250 million for flood control subventions.
- The Committee is recommending \$500 million to cover the full state liability for flood control subventions through FY 2009/10.

Appropriation:

- The Governor proposed to make these funds continuously appropriated to DWR.
- The Committee is not recommending that these funds be continuously appropriated and instead recommends that the Legislature maintain its check on the executive branch by making this program subject to the annual budget appropriation process.

**E. Floodplain Mapping Program**

**The Committee Recommends The Following:**

- That \$100 million dollars be available for appropriation by the Legislature to create and update maps that identify areas at risk of flooding.
- That the reclamation board or DWR be authorized to expend funds on the following:
  - Preparing and updating flood hazard maps that comply with the standards of the National Flood Insurance Program (also known as FEMA standards), of lands adjacent to the Sacramento and San Joaquin Rivers and their tributaries that are historically subject to overflow.
  - Providing community assistance for floodplain management activities and alluvial fan floodplain mapping in accordance with priorities established by the department in consultation with the Alluvial Fan Task Force.
  - Preparing, updating, and maintaining maps for levee protection zones. The maps shall include, if available, flood depth contours determined by the board. "Levee protection zones" are defined as those areas protected by a project levee.
- That the reclamation board and DWR be authorized to expend bond funds to conduct all necessary activities supporting development of the flood hazard maps and levee protection zone maps, including but not limited to, hydrologic studies, hydraulic studies, surveys, geotechnical investigations, and engineering evaluations, as needed.

Draft language to implement these recommendations is in the attached *Recommended Water Bond*, on page 12, under *Article 5. Floodplain Mapping Program*.

### **Justification**

Without accurate maps, local governments and citizens have no easy way to know whether or not a particular area is reasonably likely to flood.

At the November hearing of the Assembly Water Parks and Wildlife Committee, Les Harder of DWR testified that there are extensive problems with the existing maps, and that many are woefully out of date. He further testified that it may take as much as \$100 million to completely update the floodplain maps.

The administration is sponsoring AB 1665(Laird). Among other things, that legislation calls for the creation of a new class of maps that would identify levee protection zones; that is, lands protected by project levees. With such a map, a homeowner would know whether or not their house would be subject to inundation in the event of a levee failure. There is no funding source for such maps.

Given that updating floodplain maps may cost as much as \$100 million, plus the additional costs of developing levee protection zone maps, the Committee is recommending \$100 million to fund the floodplain mapping program.

### **Other Necessary Actions**

The administration is sponsoring AB 1665(Laird). This bill, among other things, would establish how levee protection zone maps would be used.

Establishing in law how levee protection zone maps would be used will require statutory action by the Legislature, either through AB 1665 or through some other bill.

### **Governor's Proposal**

Funding:

- The Governor proposed \$90 million for floodplain mapping.
- The Committee is recommending \$100 million for floodplain mapping.

Eligible Projects:

- The Governor proposed funding FEMA maps and community assistance for alluvial floodplain mapping
- The Committee is recommending adding funding for mapping levee protection zones.

Allocations:

- The Governor proposed specific allocations for specific projects.
- The Committee is not recommending specific allocations.



## **F. Floodway Corridor Program**

### **The Committee Recommends The Following:**

- That \$100 million be available for appropriation by the Legislature for the protection, creation, and enhancement of flood protection corridors.
- That the reclamation board and DWR be allowed to expend funds or award grants for all of the following:
  - Acquiring easements and other interests in real property to protect or enhance flood protection corridors and floodplains while preserving or enhancing the agricultural use of the real property.
  - Setting back existing flood control levees and, in conjunction with undertaking those setbacks, strengthening or modifying existing levees.
  - Acquiring interests in real property located in a floodplain that cannot reasonably be made safe from future flooding.
  - Acquiring easements and other interests in real property to protect or enhance flood protection corridors while preserving or enhancing the wildlife value of the real property.
- That acquisition of easements be the preferred method of acquiring property interests unless the acquisition of a fee interest is required for management purposes or the landowner will only consider the sale of a fee interest in the land.
- That in acquiring easements and other interests in real property, priority be given to willing sellers.
- That all proceeds received from the disposal of a fee interest acquired under this article be deposited into the fund and shall be made available for purposes of this article.
- That the Department of Fish and Game, the state board, and regional water quality control boards be authorized to expend funds from the bond for conducting and expediting any environmental reviews necessary for any activity funded by this article.

Draft language to implement these recommendations is in the attached *Recommended Water Bond*, beginning on page 12, under *Article 6. Floodway Corridor Program*.

### **Justification**

Floodway corridor projects attempt to address fisheries restoration, riparian habitat restoration, river restoration, and flood control improvements in a comprehensive, coordinated way.

The Committee heard public comment and received written communication from a number of interest groups expressing support for floodplain corridor projects and funding

authorized under Proposition 13. A common theme among those commenting was that funding for floodplain corridors was needed statewide, and not just in the Central Valley. Another common theme was that the floodplain corridor program was the most flexible and efficient way of providing flood protection improvements for areas where traditional approaches were not cost effective. Finally, many noted that the floodway corridor program under Proposition 13 was the only program that funded projects to reconnect rivers to their historic floodways, thereby reducing flood risk with improving ecosystem functions. Accordingly, the Committee is recommending that the floodplain corridor program be statewide and for similar projects as authorized under Proposition 13.

**Other Necessary Actions**

None

**Governor's Proposal**

Funding:

- The Governor proposed \$40 million for flood protection corridors.
- The Committee is recommending \$100 million for flood protection corridors.

Project Scope:

- The Governor proposed limiting the program to the Central Valley.
- The Committee is recommending extending the program statewide.

Program Details:

- The Governor proposed numerous restrictions and conditions on eligible projects.
- The Committee is recommending the program be patterned after the requirements of Proposition 13.
- The Committee recognizes that it may be desirable to clarify requirements of the program. However, that clarification should be either through the regular legislative process or through the development of the program solicitation guidelines.

## 4. Regional Water Management

### *The Committee Recommends The Following:*

- That \$500 million be available for appropriation by the Legislature for competitive grants to develop and implement integrated regional water management plans.
- That the Legislature be authorized to appropriate funds from any of the following sources for competitive grants to develop and implement integrated regional water management plans:
  - The Clean Water Bond Law of 1984.
  - The Safe Drinking Water Bond Law of 1984.
  - The Safe Drinking Water Bond Law of 1986.
  - The Water Conservation and Water Quality Bond Law of 1986.
  - The California Safe Drinking Water Bond Law of 1988.
  - The Clean Water and Water Reclamation Bond Law of 1988.
  - The Water Conservation Bond Law of 1988.
  - The Safe, Clean, Reliable Water Supply Act.
  - The Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act.
- That not less than 40 percent of the funds be available for eligible projects in northern California and not less than 40 percent be available for eligible projects in southern California.
  - "Southern California" is defined as the Counties of San Diego, Imperial, Riverside, Orange, Los Angeles, Santa Barbara, San Bernardino, and Ventura.
  - "Northern California" is defined as all California counties not in Southern California.
- That upon appropriation by the Legislature, DWR be authorized to expend funds for grants for water management projects that include one or more of the following elements:
  - Programs for water supply reliability, water conservation, and water use efficiency.
  - Storm water capture, storage, treatment, and management.
  - Removal of invasive non-native plants, the creation and enhancement of wetlands, and the acquisition, protection, or restoration of open space and watershed lands.
  - Non-point source pollution reduction, management, and monitoring.
  - Reservoir re-operation in conjunction with flood management.
  - Groundwater storage, recharge, or management projects.
  - Contaminant and salt removal through reclamation, desalting, or other treatment technologies.
  - Water banking, exchange, reclamation, or improvement of water quality.

- Planning and implementation of multipurpose flood control programs that protect property; improve water quality, storm and floodwater capture and percolation; and protect or improve wildlife habitat.
  - Watershed management planning and implementation.
  - Demonstration projects to develop new drinking water treatment and distribution methods.
  - Ecosystem and fisheries restoration and protection.
- That funding for integrated regional water management programs be authorized consistent with the provisions of Proposition 50.
- That to be eligible for financing, projects must be consistent with an adopted integrated regional water management plan.
    - DWR shall establish guidelines for integrated regional water management plans in consultation with the state board, the authority, the Department of Fish and Game, and the Department of Health Services.
    - It is the intent of the people of California that the department, in consultation with the state board, the authority, the Department of Fish and Game, and the Department of Health Services, revise and update the guidelines to reflect any amendments to the Integrated Regional Water Management Planning Act.
- That DWR, the state board, the CBDA, the Department of Fish and Game, and the Department of Health Services jointly develop project solicitation and evaluation guidelines. The guidelines are to include a description of the process by which the department, in consultation with the state board, the authority, the Department of Fish and Game, and the Department of Health Services, shall evaluate grant proposals and make recommendations for approval or disapproval to the director.
- That the following entities be eligible to receive a grant authorized by this chapter:
    - A public entity involved in water management, including cities, counties, cities and counties, districts, joint powers authorities, or other political subdivisions of the state.
    - An accredited public or private university or college.
    - A nonprofit organization qualified under Section 501(c)(3) of the United States Internal Revenue Code.
    - An Indian tribe.
    - An incorporated mutual water company.
    - An investor-owned utility regulated by the Public Utilities Commission.
    - A state agency.

Draft language to implement these recommendations is in the attached *Recommended Water Bond*, beginning on page 1, under *Chapter 4. Integrated Regional Water Management Program*.

### **Justification**

Integrated regional water management plans are a relatively new concept for improving water resources management.

The Legislature first established these plans under the Integrated Regional Water Management Planning Act of 2002. This Act, created by SB 1672 (Costa), permissively allowed three or more public agencies to develop a plan to address one or more specific types of water resources challenges.

Also in 2002, the voters approved Proposition 50. That bond initiative, among other things, dedicated \$500 million in Chapter 8 of the bond for integrated regional water management grants. The Department of Water Resources and the State Water Resources Control Board, in the Chapter 8 guidelines, indicated that a number of existing regional planning documents could be utilized as a functionally equivalent plan.

The Proposition 50 guidelines further stated that, for implementation grant applications to be considered for funding, the proposed or adopted plans must meet a specific set of minimum standards consistent with existing statutes.

These examples suggest that the concept of integrated regional water management is a developing concept that should be encouraged. The Proposition 50 guidelines, in particular, seem to be flexible in their definition of the precise elements of an integrated regional water management plan.

In response to the funding provided in Proposition 50, numerous regional partnerships are developing integrated regional plans consistent with the Proposition 50 guidelines. Many are doing so with the intent of applying for implementation grants. Abruptly changing the rules for such plans might cause some Proposition 50 funded plans to become obsolete.

Because the concept of integrated regional water management is relatively new, there are many impediments to widespread adoption. One major impediment is the fact that the concept itself is still evolving. That is an issue best resolved through the regular legislative process. However, another major impediment is that local agencies do not have sufficient experience with regional planning to justify investing their ratepayers' funds in developing and implementing integrated regional water management plans. Here, bond funds may be appropriate.

There are still fund balances in many old water bond authorizations, some dating back to 1984. Recent estimates show that over \$500 million is still available in water bonds authorized in or before the year 2000. These funds were originally authorized for a broad variety of programs, but all generally fall into one or more categories of programs eligible for funding through the integrated water management program. The Committee recommends that the infrastructure bond authorize the Legislature to appropriate funds from water bonds authorized by the voters in or before the year 2000 for integrated regional water management grants.

### **Other Necessary Actions**

There are a number of ideas for improving integrated regional water management planning that deserve consideration. These include:

- Changing the geographic distribution of funds
- Changing the necessary elements of the plans
- Changing allowable projects
- Changing the definition of economically disadvantaged communities
- Changing the administration of the program
- Changing how grants are awarded when there is more than one qualified application within the region

Amending the Integrated Regional Water Management Planning Act of 2002 to reflect these ideas will require statutory actions by the Legislature.

### **Governor's Proposal**

Funding:

- The Governor proposed \$500 million for integrated regional water management grants.
- The Committee is recommending \$500 million for integrated regional water management grants
- The Committee is also recommending granting the Legislature the authority to appropriate funds from water bonds authorized by the voters in or before the year 2000.

Appropriation:

- The Governor proposed to make these funds continuously appropriated to DWR.
- The Committee recommends that the Legislature maintain its check on the executive branch by making this program subject to the annual budget appropriation process.

Geographic Distribution:

- The Governor proposed specific dollar allocations for each of the 11 major hydrologic basins.
- The Committee is recommending continuing the north/south split established in Proposition 50.
- The Committee recognizes that there may be merit to providing a further subdivision of integrated regional water management funds. However, that issue should be resolved through the regular legislative process.

Program Details:

- The Governor proposed numerous restrictions and conditions on eligible programs and projects beyond those established under Proposition 50 or the Integrated Regional Water Management Planning Act of 2002.
- The Committee is recommending that conditions placed on eligible programs and projects be patterned after the requirements of Proposition 50 and the Integrated Regional Water Management Planning Act of 2002.

- The Committee recognizes that there may be merit to providing a further direction for developing and implementing integrated regional water management programs and projects. However, that issue should be resolved through the regular legislative process.



## 5. Statewide Water Management

The Committee recommends that the infrastructure bonds authorize a total of \$1.0 billion for statewide water management programs, as follows:

\$350 M	Water Quality Protection & Improvement
\$250 M	CalFed Bay Delta Program
\$400 M	Ecosystem Restoration & Improvement

### A. Water Quality Protection & Improvement

#### **The Committee Recommends The Following:**

- That \$10 million be available for appropriation by the Legislature to the Department of Health Services for grants and direct expenditures to fund emergency and urgent actions to ensure that safe drinking water supplies are available to all Californians. Eligible projects should include, but not be limited to, the following:
  - Providing alternate water supplies including bottled water where necessary to protect public health.
  - Improvements in existing water systems necessary to prevent contamination or provide other sources of safe drinking water including replacement wells.
  - Establishing connections to an adjacent water system.
  - Design, purchase, installation and initial operation costs for water treatment equipment and systems.
- That \$150 million be available for appropriation by the Legislature to the Department of Health Services for grants for small community drinking water system infrastructure improvements and related actions to meet safe drinking water standards. The Department of Health Services should give special consideration to small communities with limited financial resources.
- That \$50 million be available for appropriation by the Legislature for deposit into the Safe Drinking Water State Revolving Fund to provide the state share needed to obtain federal funds to assist communities in providing safe drinking water.
- That \$80 million be available for appropriation by the Legislature for deposit into the State Water Pollution Control Revolving Fund to provide the state share needed to obtain federal funds to assist communities in making those infrastructure investments necessary to prevent pollution of drinking water sources.
- That \$60 million be available for appropriation by the Legislature to the Department of Health Services for the purpose of loans and grants for projects to prevent or reduce contamination of groundwater that serves as a source of drinking water. The Department of Health Services shall require repayment for costs that are subsequently recovered from parties responsible for the contamination.

Draft language to implement these recommendations is in the attached *Recommended Water Bond*, beginning on page 16, under *Article 1. Safe Drinking Water and Water Quality Protection*.

### **Justification**

The water quality protection and improvement programs provide funds to meet critical health and safety needs primarily to economically disadvantaged communities.

The proposed initiative titled “The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006” contains funding for water quality protection and improvement programs. The proponents of that proposed initiative vetted the water quality provisions widely among water agencies, community interest groups, environmental advocacy groups, and governmental experts. The consensus was that the funding levels proposed in that initiative for water quality actions would help make significant progress toward improving water quality.

The Committee recommends that funding for water quality protection and improvement programs be authorized consistent with the provisions of “The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.”

### **Other Necessary Actions**

None

### **Governor’s Proposal**

Funding:

- The Governor proposed \$250 million for water quality protection and improvement programs.
- The Committee recommends \$350 million for water quality protection and improvement programs.

Programs:

- The Governor proposed to fund the following water quality programs:
  - Funding the state cost share through the Safe Drinking Water State Revolving Fund
  - Funding the state cost share through the State Water Pollution Control Revolving Fund.
  - Providing emergency funding for remediation or containment of groundwater contamination to mitigate existing and imminent threats to water supplies.
  - Mitigating the impacts of urban and agricultural runoff and drainage.
- The Committee recommends, in addition to those water quality programs proposed by the governor, the following programs:
  - Expenditures for emergency and urgent actions to ensure that safe drinking water supplies are available to all Californians.

- Grants for small community drinking water system infrastructure improvements and related actions to meet safe drinking water standards.
- The Committee recommends not funding the Governor's proposed program to mitigate impacts of urban and agricultural runoff and drainage.
- The Committee recognizes that urban and agricultural runoff can seriously degrade water quality. However, it is the Committee's policy not to provide funds for actions that are the responsibility of others. Under current law, those that cause urban and agricultural runoff and drainage are responsible for mitigating those impacts.

Appropriation:

- The Governor proposed to make these funds continuously appropriated to DWR.
- The Committee recommends that the Legislature maintain its check on the executive branch by making this program subject to the annual budget appropriation process.

DWR vs. DHS & SWRCB

- The Governor proposed to appropriate funds in a way that appears to make DWR responsible for funding water quality programs in DHS and SWRCB.
- The Committee recommends that the Legislature appropriate funds directly to the agencies responsible for implementing the program.

## **B. CalFed Bay Delta Program & Surface Storage**

**The Committee Recommends The Following:**

- That \$250 million be available upon appropriation of the Legislature to support the CalFed Bay-Delta Program.
- That of the funds made available for CalFed, not more than \$22 million be available to support development of surface water storage. Funds for surface storage development shall only be used for the following purposes:
  - Completion of surface water storage planning, feasibility studies, and environmental documentation pursuant to the CALFED Bay-Delta Program.
  - Preliminary engineering design of surface storage projects.
  - Identification of storage project design options that can help protect and restore the environment.
  - Evaluation of cost sharing for surface storage to support broad public benefits, federal interests in the project, and local public agency or private benefits through water supply or power generation.

Draft language to implement these recommendations is in the attached *Recommended Water Bond*, on page 17, under *Article 2. CalFed Bay-Delta Program*.

**Justification**

The mission of the CALFED Bay-Delta Program is to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta System.

However, delta resident fish populations are collapsing. A recent Department of Finance report showed that many of the programs were seriously under funded, particularly the water quality program, and the Little Hoover Commission documented a litany of institutional shortcomings with the program.

Last year, the Legislature significantly reduced funding for the CalFed program. This was a reaction to the inadequacy of the program's finance plan. Serious concerns remain about the long-term viability of the program. Nonetheless, the Committee recommends providing sufficient funding to keep the program viable for the next few years, in the hopes that the program can be rejuvenated.

*Surface Storage:* One of the program areas of CalFed is surface storage. According to the July 2005 CalFed program plan for surface storage, all five of the surface storage investigations are significantly behind schedule. None of the projects have completed the environmental review and documentation process called for in the CalFed Record of Decision, and the Upper San Joaquin River Storage project isn't scheduled to complete its environmental review and documentation until August 2009. Complete environmental review and documentation is necessary to determine the feasibility of any project.

The California Water Plan Update identifies a number of strategies for addressing the state's future water needs, many of them being quite cost effective and providing a statewide benefit. For example, according to the chapter titled "Precipitation Enhancement," cloud seeding could provide an additional 300,000 to 400,000 acre-feet of water a year, at a cost of about \$19 per acre-foot. The water plan further shows that precipitation enhancement provides an energy benefit to the state, as well.

According to the recent update of the California Water Plan, the unmet need for feasibility and environmental studies for the five surface storage sites totals \$21.6 million. The Water Plan also notes that any future federal appropriation will further reduce this need. The Committee recommends allowing up to \$22 million of the funds for the CalFed program to be used for completing the surface storage studies.

### **Other Necessary Actions**

The CalFed Bay-Delta Program is in turmoil. This is amply documented in the recent Little Hoover Commission report titled *Still Imperiled, Still Important*. The goal of CalFed is laudable. It ought to be possible for various water interests to work cooperatively to reduce the conflicts in the delta. However, no one seems to have the actual responsibility for ensuring progress. There has been a remarkable lack of fiscal accountability on the part of the California Bay Delta Authority and the implementing agencies. It is not clear who determines which specific program expenditures are necessary to meet the program goals, nor how that determination is made. Federal participation, both financially and programmatically, has been woefully lacking. Separate legislation and budgetary actions will be necessary to resolve the problems with CalFed.

### **Governor's Proposal**

#### Funding:

- The Governor is not proposing specific funding for the CalFed program.
- The Committee recommends \$250 million for the CalFed program.

#### Surface Storage:

- The Governor initially proposed \$250 million in 2006 for planning and design of surface storage projects that are a part of the CalFed program and for study and construction of groundwater storage/conjunctive use projects that provide interregional benefits. The initial proposal would have provided \$1 billion in 2010 for the construction of surface storage projects that are a part of the CalFed program and groundwater storage and conjunctive use projects that provide interregional benefits.
- The Governor subsequently proposed to provide \$1.25 billion in 2006 to complete the planning and design of surface storage, study and construct groundwater storage projects, and fund the state share of construction of surface storage projects that may be recommended by the CalFed program. However, the \$1.0 billion for surface storage construction would be conditioned on the following:
  - State completion of all feasibility studies, CEQA and NEPA environmental review documentation, and all applicable permit processes.
  - State preparation of final cost sharing agreements to define cost and benefit distributions for any proposed project.
  - Legislative review of the project proposals and authorization of the projects.
  - No construction funds would be available for appropriation until 2010.
- The Committee recommends that, of the \$250 million recommended for the CalFed program, \$22 million be available to support development of surface water storage. Funds for surface storage development shall only be used for the following purposes:
  - Completion of surface water storage planning, feasibility studies, and environmental documentation pursuant to the CALFED Bay-Delta Program.
  - Preliminary engineering design of surface storage projects.
  - Identification of storage project design options that can help protect and restore the environment.
  - Evaluation of cost sharing for surface storage to support broad public benefits, federal interests in the project, and local public agency or private benefits through water supply or power generation.
- The Committee recognizes that groundwater storage projects can play a vital role in improving water management. However, those projects should be funded through the integrated regional water management program.

## **C. Ecosystem Restoration & Improvement**

### **The Committee Recommends The Following:**

- That \$400 million be available upon appropriation of the Legislature for resource stewardship and ecosystem restoration, including, but not limited to, any of the following:
  - Restoration of the San Joaquin River system.
  - Restoration of the Sacramento-San Joaquin Delta.
  - Habitat conservation planning and implementation.
  - Conservation easements on agricultural land.
  - Restoration of the Salton Sea.
  - Other ecosystem restoration projects and programs.

Draft language to implement these recommendations is in the attached *Recommended Water Bond*, beginning on page 17, under *Article 3. Ecosystem Restoration and Improvement*.

### **Justification**

The need for ecosystem restoration in watersheds across California seems self-evident. The Delta ecosystem is collapsing. The Salton Sea is dying. And salmon populations are so low, commercial salmon fishing on the north coast may be banned latter this spring. At the same time, some longstanding conflicts may be about to be resolved on key river systems such as the San Joaquin River. The Committee recommends that the infrastructure bond contain sufficient funds to improve and restore ecosystems.

### **Other Necessary Actions**

None

### **Governor's Proposal**

Funding:

- The Governor proposed \$200 million for resource stewardship and ecosystem restoration.
- The Committee recommends \$400 million for water quality protection and improvement programs.

Appropriation:

- The Governor proposed to make these funds continuously appropriated to DWR.
- The Committee recommends that the Legislature maintain its check on the executive branch by making this program subject to the annual budget appropriation process.

DWR vs. DFG

- The Governor proposed to appropriate funds in a way that appears to make DWR responsible for funding ecosystem programs in DFG.

- The Committee recommends that the Legislature appropriate funds directly to the agencies responsible for implementing the program.

Davis-Dolwig:

- The Governor proposed that \$20 million be set aside for public recreation and fish and wildlife enhancement costs incurred pursuant to the Davis-Dolwig Act.
- The Committee recommends that Davis-Dolwig payments be made consistent with existing law, which states legislative intent that the payments be made through the annual budget process.

## **D. Other Programs Proposed In the Governor's Bond**

### **The Committee Recommends The Following:**

- That the infrastructure bonds not include specific funding for advancement of water resources and water quality science and technology.

### **Justification**

Science and technology development is important. However it is not appropriate to use bond funds to fund such programs.

### **Other Necessary Actions**

None

### **Governor's Proposal**

Funding:

- The Governor proposes \$300 million dollars for water resources and water quality science and technology.
- The Committee recommends no direct funding for water resources and water quality science and technology.
- The Committee recognizes that science is an integral part of the CalFed program. To the extent that directed science is needed to resolve a water resources problem, it should be funded through the CalFed program.



## 6. Natural Resources Infrastructure

The natural resources infrastructure proposal made in this report has benefited tremendously from the work over the last year by Senator Wesley Chesbro and from his legislation, SB 153, a resources and parks proposal of \$3.945 billion. The Committee heard from numerous stakeholders that the Chesbro bond, while not all things to all stakeholders, represents a level of investment that will allow California's "natural infrastructure" to be maintained over the next several years.

The Committee recommends adopting the Chesbro bond proposal in its entirety. It also recommends four increases to discrete categories of the Chesbro bond to respond to the crisis in California's state parks as well as to meet California's pre-existing statutory obligations at Lake Tahoe and at the Salton Sea. Finally, the Committee recommends a new, relatively, small funding category for cost-share grants at the Coastal Commission to help coastal communities develop and amend their local coastal plans.

The Committee therefore recommends that the infrastructure bonds authorize a total of \$4.445 billion for natural resources infrastructure, as follows:

\$1,970 million	Neighborhood, Community, & Regional Parks
\$1,800 million	State Parks & Wildlife Protection
\$675 million	Clean Water & Coastal Protection

### A. Neighborhood, Community, & Regional Parks

#### **The Committee Recommends The Following:**

- That \$1.97 billion be available upon appropriation of the Legislature for neighborhood, community and regional parks and recreation areas as follows:
  - \$500 million to the Department of Parks and Recreation (DPR) for local assistance grants, on the basis of population, for the acquisition, restoration and development of neighborhood, community, and regional parks and recreation lands and facilities.
    - \$500 million to DPR for grants for urban and special needs park and recreation programs and facilities in accordance with the following schedule:
  - \$150 million for the Murray-Hayden Urban Parks and Youth Service Program
  - \$150 million for the Urban Park Act of 2001
  - \$100 million for the California Youth Soccer and Recreation Development Program
  - \$100 million for the State Urban Parks and Healthy Communities Act
- \$50 million to DPR for grants, for the development, improvement, rehabilitation, restoration, enhancement, and interpretation of nonmotorized trails including, but not limited to, the San Francisco Bay Trail, the San Francisco Bay Water Trail and the California Coastal Trail for the purpose of increasing public access to, and enjoyment of, public areas for increased recreational opportunities.

- \$300 million to state conservancies that provide regional parks and recreational areas, in accordance with the particular provisions of the statute creating each conservancy, for acquisition, development, restoration and interpretation, and for grants for these purposes, according to the following schedule:
  - \$40 million to the Baldwin Hills Conservancy
  - \$40 million to the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy
  - \$40 million to the San Francisco Bay Area Conservancy Program
  - \$40 million to the Santa Monica Mountains Conservancy
  - \$40 million to the Sierra Nevada Conservancy
  - \$40 million to the California Tahoe Conservancy
  - \$20 million to the Coachella Valley Mountains Conservancy
  - \$30 million to the San Joaquin River Conservancy
  - \$10 million to the San Diego River Conservancy
- \$200 million to the California Tahoe Conservancy for environmental protection programs and projects.
- \$30 million to the California Conservation Corps for the acquisition, development, restoration, and rehabilitation of land and water resources, and for grants and state administrative costs, in accordance with the following schedule:
  - \$15 million for resource conservation projects.
  - \$15 million for grants to local conservation corps for acquisition, restoration, and development of facilities to support local corps programs, and for local resource conservation activities to improve public safety and improve and restore natural resources including regional and community fuel load reduction projects on public lands, and stream and river restoration projects.
- \$100 million to the California Cultural and Historical Endowment for competitive grants for the acquisition and preservation of buildings, structures, sites, places, and artifacts that preserve and demonstrate culturally significant aspects of California's history and for grants for these purposes.
- \$50 million to DPR for grants to natural history museums, aquariums, and botanical gardens that combine the study of natural science with preservation, demonstration, and education programs that serve diverse populations. Grants may be used for buildings, structures, and exhibit galleries that present the collections to inspire and educate the public.
- \$150 million to DPR for grants for the acquisition, development, and restoration of regional parks that serve multiple neighborhoods or communities, and that provide access to recreational opportunities that are lacking or limited within the region served or that provide a unique resources protection opportunity within the region.
- \$50 million to the State Coastal Conservancy for grants for acquisition, development, and restoration to expand the Santa Ana River Parkway.
  - \$20 million shall be for park projects adjacent to the mouth of the Santa Ana River.
  - \$30 million shall be equally divided between projects in Orange, San Bernardino, and Riverside Counties.

- \$10 million for the purposes of urban forestry grants .
- \$30 to DPR for grants to cities and counties in areas that are not eligible for grants for the development, improvement, rehabilitation, restoration, enhancement, and interpretation of nonmotorized trails and that have a severe shortage of parks and recreational facilities.

Draft language to implement these recommendations is in the attached *Recommended Resources Bond*, beginning on page B4, under *Article 3. Neighborhood, Community and Regional Parks and Recreation Areas*.

### **Justification**

Expenditures for natural infrastructure are essential in order that our citizens can fully enjoy the benefits of our built environment.

Grants for urban and local parks, like many other categories of California’s infrastructure, are dramatically oversubscribed. The level of funding proposed in this bond will roughly equal the unmet demand from previous resource bonds. It is also important to fund previously unfunded, or underfunded categories such as nonmotorized trails, grants to communities which are underserved by parks, and the regional conservancies, many of which will be unable to fulfill their activities absent the funding in this proposal. It is true that not all of the categories funded in this category are now without financial resources. On the other hand, over the course of the availability of the funds proposed in the Chesbro bond, and in the absence of a General Fund commitment, each of these categories will require additional funds.

### **Other Necessary Actions**

None

### **Governor’s Proposal**

There was no comparable proposal from the administration.

## **B. State Parks & Wildlife Protection**

### **The Committee Recommends The Following:**

- That \$1.8 billion be authorized for state parks and wildlife protection, as follows:
  - \$900 million to be appropriated by the Legislature for acquisitions, development, interpretation, restoration, and rehabilitation of the state park system with at least \$30 million going to state park lands administered by local agencies
  - \$300 million to the Wildlife Conservation Board for the acquisition, development, rehabilitation, restoration, and protection of habitat for threatened and endangered species, links to habitat areas, and the protection of natural landscapes and ecosystems.
  - \$100 million: easements and fee purchase of “working landscapes,” agricultural lands, grazing lands, and oak woodlands

- \$250 million: Wildlife Conservation Board and the State Coastal Conservancy for joint forest conservation projects
- \$150 million: Wildlife Conservation Board grants for Natural Community Conservation Plans
- \$100 million for implementation of existing air quality and habitat requirements at Salton Sea

Draft language to implement these recommendations is in the attached *Recommended Resources Bond*, beginning on page B6 under *Article 4. State Parks and Wildlife Protection*.

### **Justification**

The Committee heard testimony that the Department of Parks and Recreation faces a \$900 million backlog in deferred maintenance. It is the Committee's intention that the bond be flexible enough to pay for all, or virtually all, of this backlog.

The funds to the Wildlife Conservation Board are necessary to allow this entity to continue purchasing key blocks of habitat and conservation lands from willing landowners. Grants for NCCPs are among the most effective ways for the state to provide assistance to local governments that are trying to allocate lands for new development or wildlife conservation. The forestry program, although new, will be designed to help keep a working forestry land base in California which will be important environmentally as well as to the economic health of rural communities.

### **Other Necessary Actions**

None

### **Governor's Proposal**

There was no comparable proposal, although the Salton Sea was eligible for funding with other ecosystem restoration projects.

## **C. Clean Water & Coastal Protection**

### **The Committee Recommends The Following:**

- That \$675 million be authorized for Clean Water and Coastal Protection, as follows:
  - \$250 million: State Coastal Conservancy with at least \$15 M going to the coastal watersheds of the international border region
  - \$200 million: Clean Beaches Program, the Integrated Regional Water Management Program, the mercury contamination reduction program, and emergency actions to provide low-income communities with safe drinking water.
  - \$50 million: California River Parkways Act of 2004
  - \$100 million: Ocean Protection Trust Fund for the benefit of projects awarded by the Ocean Protection Council
  - \$25 million: urban stream restoration projects

- \$40 million: for clean-up of the New River
- \$10 million for grants to local communities to develop and amend local coastal plans

Draft language to implement these recommendations is in the attached *Recommended Resources Bond*, beginning on page B8, under *Article 5. Clean Water and Coastal Protection*.

### **Justification**

This is the only suggested funding for the coastal conservancy which provides vital land acquisition services for communities along the coast, the Ocean Protection Council, and various coastal water quality programs. Additionally, these funds will maintain the fluidity of the River Parkways program over the life of this bond, and it will pay for the cleanup of the New River, arguably the most polluted river in America, which adversely affects a largely Latino, low-income community.

### **Other Necessary Actions**

The Legislature should implement a policy bill on the mercury remediation program and on the grants program for local coastal plans.

### **Governor's Proposal**

There was no comparable administration proposal.

## 7. Water Resources Investment Fee

### **The Committee Recommends The Following:**

- That the Water Resources Investment Fee not be considered as a part of the infrastructure bonds.

### **Justification**

Many believe there are sound reasons for some sort of resources consumption charge on water. However, there are vastly different opinions both on how the charge should be assessed, and the purposes for which the proceeds should be used. The timeline for approving the Governor's proposed bonds simply does not allow sufficient time to properly evaluate all the issues that this proposed charge raises. The Committee, therefore, recommends that the Legislature continue to work to evaluate and resolve the issues raised by this proposed water charge through the regular legislative process.

### **Other Necessary Actions**

Implementation of any water resource consumption charge would require legislation.

### **Governor's Proposal**

- The Governor proposes to impose a fee based on retail water providers based on the number and types of connections to fund integrated regional water management projects.
- The Committee recommends not pursuing the water resources investment fee as a part of the infrastructure bonds.
- The Committee recognizes that the need for a water resources consumption charge is an important policy question. However, that issue should be resolved through the regular legislative process.

## 8. Other Provisions

### Economically Disadvantaged Communities

#### **The Committee Recommends The Following:**

- That “disadvantaged community” be defined as a community with an annual median household income that is less than 80 percent of the statewide annual median household income.

Draft language to implement this recommendation is in the attached *Recommended Water Bond*, on page 2, Section 82002, subdivision (n).

#### **Justification:**

This definition was established in the water code by the Legislature as a part of enacting Proposition 50.

#### **Other Necessary Actions:**

None

#### **Governor’s Proposal:**

- The Governor proposed to define “disadvantaged community” as a community with an annual median household income that is less than 80 percent of the regional annual median household income.
- The Committee recommends maintaining the definition used in Proposition 50.

### Native American Consultations

#### **The Committee Recommends The Following:**

- That, before the adoption of any negative declaration or environmental impact report required to implement a project funded by this bond, the lead agency refer the proposed action to any California Native American tribe which is on the contact list maintained by the Native American Heritage Commission and which has traditional lands located within the area of the proposed project.

Draft language to implement this recommendation is in the attached *Recommended Water Bond*, on page 3, Section 82005, subdivision (b).

#### **Justification:**

Many of the actions fundable by this bond could affect traditional lands of Native American tribes. The Committee recommends that consultation take place before adoption of any environmental document to ensure traditional tribal lands are treated appropriately.



**Other Necessary Actions:**

None

**Governor's Proposal:**

- The Governor did not propose tribal consultation as a part of any negative declaration or environmental impact report.
- The Committee recommends tribal consultation be a part of any negative declaration or environmental impact report.

**Program Guidelines**

**The Committee Recommends The Following:**

- That by March 15, 2007, each state agency disbursing grants or loans, or expending funds for reimbursements or cost sharing pursuant to this division, shall adopt project solicitation and evaluation guidelines. The guidelines may include a limitation on the size of grants or loans to be awarded.
- That prior to disbursing grants, each state agency shall conduct two public meetings to consider public comments prior to finalizing the guidelines.
- That the guidelines may include a requirement for matching funds. However, a state agency may not require matching funds for the purposes of awarding a grant financed by this division to assist a disadvantaged community.
- That a state agency, in lieu of adopting guidelines, be allowed to use guidelines existing on January 1, 2007, to the extent those guidelines conform to the applicable requirements of this division.

Draft language to implement these recommendation is in the attached *Recommended Water Bond*, on page 3, Section 82003.

**Justification:**

This process was established in the water code by the Legislature as a part of enacting Proposition 50. By all accounts, it worked well.

**Other Necessary Actions:**

None

**Governor's Proposal:**

- The Governor initially proposed to authorize state agencies to develop emergency regulations to govern project solicitation and evaluation. The emergency regulations were to be in effect for up to two years.
- The Governor subsequently proposed to authorize state agencies to develop emergency regulations, but only after the agencies held workshops.

- The Committee recommends continuing the guideline development process established as a part of Proposition 50 implementation.

## **CalFed Consistency**

### **The Committee Recommends The Following:**

- That any project that will wholly or partially assist in the fulfillment of one or more of the goals of the CALFED Bay-Delta Program be consistent with the CALFED Programmatic Record of Decision as it may be revised, and be implemented, to the maximum extent possible, through local and regional programs.
- That to ensure consistency with the CalFed program, the CBDA or its successor review regulations, guidelines, or criteria that are proposed by an implementing agency to carry out a grant program for projects and activities that may affect CalFed.

Draft language to implement this recommendation is in the attached *Recommended Water Bond*, on page 4, Sections 82006 and 82007.

### **Justification:**

This process was established in the water code by the Legislature as a part of enacting Proposition 50.

### **Other Necessary Actions:**

None

### **Governor's Proposal:**

- The Governor did not propose that projects be consistent with the CalFed Program.
- The Committee recommends continuing the CalFed consultation process established as a part of Proposition 50 implementation.

## **Definition of Capital Projects**

### **The Committee Recommends The Following:**

- That the bond language be specific to the types of projects fundable under each program and not include the “notwithstanding” language that would change the definition of capital assets established in the General Obligation Bond Law.

### **Justification:**

The LAO recently noted a large portion of the funding under the Governor's bond proposal includes:

*...provisions that are stated to be “notwithstanding Government Code section 16727.” This Government Code section essentially provides that general*

*obligation bonds are to be used for capital purposes. In some cases it is clear why the “notwithstanding” provision is needed—such as to allow bond funds to be used for floodplain mapping. However, the notwithstanding provision applies to the whole water management component of the two bond acts, totaling \$6.5 billion. It is unclear why the notwithstanding provision is made to apply so broadly; this opens the door to expensive debt financing of noncapital expenditures if controls are not put in place to limit this practice.*

**Other Necessary Actions:**

None

**Governor’s Proposal:**

- The Governor proposed numerous exemptions to the definition of capital assets.
- The Committee recommends not including these exemptions to the definition.

**Sub-Accounts**

**The Committee Recommends The Following:**

- That sub-accounts not be established for each program.

**Justification:**

The administrative costs of establishing and maintaining sub-accounts is significant and provides no real benefit.

**Other Necessary Actions:**

None

**Governor’s Proposal:**

- The Governor proposed to establish sub-accounts for each program
- The Committee recommends that sub-accounts not be established

## **Appendix A: Recommended Water Bond Language**

## **Appendix B: Recommended Resources Bond Language**

**TO:** Senator Kevin Murray

**FROM:** Senator Sam Aanestad

**DATE:** March 1, 2006

**RE:** Minority Report on Water & Flood Control

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### Summary

The Governor's water and flood control bond measure (SB 1166/Aanestad) makes the first significant investments in flood protection and surface water storage in a generation. Over the last decade California voters approved \$6.6 billion in bonds labeled as "water" measures according to the Legislative Analyst, but less than 7% of the proceeds went to levees and an even smaller share toward surface storage. In marked contrast, SB 1166 earmarks a 28% share to flood protection and 14% for surface storage.

The Administration's proposed amendment to move \$1 billion for surface storage construction from the 2010 to the 2006 bond is good policy for both water and flood control. California must do what it can to bring significant new water supply on-line, as we face a severe shortage in our next drought season. Dams have also played a crucial role in managing Northern California's volatile rivers and restraining floodwaters that can easily overtop levees. Storage projects identified by the CALFED program can create major benefits in both areas.

Funds for levee improvements and repairs should also be "frontloaded" in a way that sufficiently addresses the immediate system needs without relying upon full federal matching funds or the success of a 2010 bond measure.

While sufficient funding for flood control is crucial, serious reforms of our levee management system are just as critical. State and local levee programs are beset by a regulatory process that delays important projects for years and puts human lives at risk. The Legislature needs to streamline the project approval process and provide a definable set of objectives for repairing and upgrading the state-managed system.

Eliminating unnecessary delays will help contain the rising costs associated with flood protection. We are aware of no other government service or public works that has experienced the kind of cost inflation seen recently with levee repair. Given the financial constraints on both the state and the many local governments responsible for managing levees, lawmakers must work not only to streamline the regulatory process but commit to cutting costs and improving project efficiency wherever possible.

We need a renewed focus on channel maintenance, particularly in the state-managed Sacramento River Flood Control Project. This man-made system of weirs and bypasses diverts heavy flood flows out of the rivers and away from populated communities. In the last few years, sediment and vegetation in rivers and bypasses has reduced system capacity significantly, creating urgent problems to which the state has responded in piecemeal fashion. A program for regular maintenance of rivers, streams, weirs, and bypasses of the Sacramento River project with a reliable budget is desperately needed.

On the water bond, integrated regional water management (IRWM) should be supported only as part of an overall plan to address water needs. It must be linked to surface water storage funding and assurances. Such assurances should include both the authorization and the continuous appropriation of funds for surface storage construction. We believe that sound water policy should address both the supply and demand for water. For too long this Legislature has focused almost solely on demand.

The Water Resources Investment Fund (WRIF) capacity charge contained in this measure is not part of the bond proposal, not necessary for the successful implementation of IRWM programs, and should be eliminated. There is no consensus that this tax is necessary or on the best way to both collect the money and spend it. It bears no relation to the bond package at all and will simply fund existing programs.

Senate Republicans oppose the WRIF not only because of the lack of need, but the charge is a tax, not a fee. WRIF expenditures do not



focus on water infrastructure and maintenance, and in fact will be used for many uses that are “public benefits” normally supported by general taxes.

### Levee Program

The administration’s levee program proposes \$210 million in the 2006 bond and \$300 million in the 2010 bond for levee repairs, sediment removal, evaluations, floodplain mapping, and the floodway corridor program.

### **Erosion Repairs**

The \$50 million for levee erosion repairs contained in SB 1166 is too little, as is the Administration’s proposal to raise that amount to \$75 million. The U.S. Army Corps of Engineers recently identified over 180 erosion sites along the Sacramento River Flood Control Project including three dozen listed as “critical” threats. In its white paper on flood control, DWR estimated \$600 million for repair of these sites.

The bond measure should outline a more aggressive approach to levee repair, anticipate problems with federal funding, and delineate specific objectives for these funds. Senate Republicans support a program targeting known erosion sites and levee deficiencies with funding and fast-track approvals.

Any use of funds for setback levees in this section should be subject to a cost comparison with simple repair of the existing levee.

### **Sediment Removal**

Any water bond should contain funding for sediment removal as a vital component of flood protection. The weirs and bypasses of the Sacramento River Flood Control Project were designed to carry three to five times as much water as parallel sections of the Sacramento River, but key parts of that system are choked with sediment and vegetation. Maintaining these channels is absolutely critical, as even small reductions in the bypass capacity puts significant additional pressure on river levees.

The real problem in our flood channels is a lack of regular maintenance. The design capacity of rivers, streams, and bypasses within the flood control system needs to be monitored and maintained on a regular basis. Instead, the state has taken a piecemeal approach to channel maintenance, waiting until significant problems arise. When they do, nearby levees assume the increased flood risk while state officials search for project-level funding and obtain necessary

approvals. The state cannot continue to allow a predictable maintenance issue to fester into major remediation projects.

Channel maintenance and levee maintenance go hand-in-hand. A poorly maintained river channel increases the likelihood of levee erosion by raising and diverting water flows. Raising a levee will not improve flood protection if the water level in the adjacent channel rises with it. Heavy vegetation, trees and sediment can also block the flow of floodwater, creating a pooling effect that saturates levee soils and causes ruptures.

There should be a full evaluation of the current capacity of the Central Valley flood control system, an allocation to sediment removal sufficient to restore the system's design capacity, and a formal system of regular maintenance of flood channels that includes all rivers, tributaries, and man-made structures of the Sacramento River Flood Control Project. The system should be maintained so that future channel clearing does not rise to the level of a "project" where it is subject to CEQA/NEPA and other permit requirements.

We disagree with the department's assessment that sedimentation in the Sacramento River does not impact flood protection, and recommend the Sacramento River be included in this program.

### **Regulatory Reform**

The need for reform of our flood protection programs could not be more evident. Over the last twenty years, the cost of levee repair has risen from an average of \$300 per linear foot to \$5,000, with some projects approaching \$9,000. Regulatory delays have reached five years or more in some cases, doubling and tripling overall costs. These delays are a result of a burdensome process of reviewing, permitting, and mitigating levee projects on a site-by-site basis with the oversight of multiple state and federal agencies. According to DWR estimates, mitigation and permitting have devoured as much as 45% of the funds for recent levee projects. Additional construction costs resulting from related delays are impossible to calculate but clearly significant.

To one extent or another, both parties have acknowledged the role that the regulatory process plays in reducing available flood funds and delaying projects. Some have argued that federal agencies are largely responsible for regulatory entanglements and costs associated with flood control, so there is little the Legislature can do in this area.

We disagree wholeheartedly. To achieve significant reforms of this state/federal regulatory system, California must take the lead. We

also find that state laws and regulations are frequently a hindrance to flood control efforts:

- In its enforcement of the California Endangered Species Act (CESA), the Department of Fish and Game (DFG) currently requires 2-1 and 3-1 mitigation ratios for habitat impacted by levee projects in the Delta. This means that each individual shrub or tree affected or removed must be replaced two and three-fold. Though not as burdensome as the 5-1 mitigation ratios required by the National Fish and Wildlife Service (NFWS), these state ratios nevertheless require a flood agency to purchase additional acreage elsewhere for planting, as well as the need to hire consultants for ongoing monitoring.
- State regulations also present roadblocks to channel maintenance. The \$80 million in flood damages along the Mojave River in 2005 were a direct result of a decade of unabated sediment and vegetation accumulation over nearly a decade, caused by the elimination of a local maintenance program. San Bernardino County cited DFG's interpretation of "no net loss" of habitat as a key reason for its discontinuation of channel maintenance.
- The stipulated facts of the Arreola v. Monterey County (99 Cal. App. 4<sup>th</sup> 722, 2002) outline DFG's role in obstructing channel maintenance along the Pajaro River and the role of those decisions in a 1995 flood that caused hundreds of millions in damages. When locals applied for a permit to clear the channel in 1991, DFG "issued the permit, but limited its permission to hand clearing and then later halted the work." When its levees overtopped four years later, the Pajaro River was flowing at only two-thirds of its design capacity.
- DWR's own evaluation of five recent levee projects point to hurdles created costs added by CESA and the California Environmental Quality Act (CEQA), including off-site mitigation, as reasons for project delay and mitigation costs that approached 90% of the levee project itself.
- The Legislature has mandated that the Delta Levees Program include a net improvement of wildlife habitat (AB 360/1996). Over the past five years, DWR used 28% of funds in the Delta program to purchase land for habitat restoration.
- Delays and paperwork costs are inherent in a system that requires site-by-site, district-by-district review of flood repairs

and maintenance. Both sides in the Legislature acknowledge this problem, though the Majority contends that the system wide permit for the Delta Levees Program is an example of “ample streamlining mechanisms to reduce costs and delays....” However, no such program currently exists for the Sacramento and San Joaquin Rivers, despite various efforts on the local level. State directive is needed in this area.

After the 1997 floods, the Legislature exempted “non-project” levees from CEQA review through the enactment of SB 181 (Kopp). That measure was an acknowledgement that CEQA was an impediment to swift action on our levees. We argue the situation is no less urgent today, and perhaps more urgent because we now have the opportunity to prevent such catastrophes.

Serious reforms are needed to create a workable, more cost-effective system that fixes levees sooner rather than later. The following steps can reduce regulatory “red tape” and contain flood control costs:

- ✓ Establish a single permit or agreement among all regulatory agencies, similar to that for the Delta Levees Program, for flood control repairs and maintenance in the Sacramento and San Joaquin River systems.
- ✓ Set a reasonable “one-to-one” limit, based on habitat affected, for mitigation related to flood control projects. This not only reduces costs, it is an acknowledgement that human habitat is as important as wildlife habitat, and recognizes the severe environmental hazards posed by weakened levees.
- ✓ Codify the Governor’s recent emergency actions on our levee system. Critical and potentially critical deficiencies or erosions of our levees should be granted all of the “fast-track” clearances from regulatory reviews and consultations that are allowed after levee failures. This measure should include the 36 critical and potentially critical erosion sites identified by the Army Corps of Engineers and any others identified by DWR.
- ✓ Streamline the CEQA process for flood control and water projects according to the reforms suggested in SB 1191 (Hollingsworth) which will further reduce process delays, limit abusive litigation, and clarify cumulative impacts
- ✓ Eliminate any existing or proposed requirements that a project or program of flood control not only mitigate but *restore* species habitat.

- ✓ Provide clear statutory directives to wildlife agencies emphasizing the significance of flood protection and the need to expedite such projects.
- ✓ Provide an exemption from streambed alteration permit requirements (Fish and Game Code Section 1600) that will allow immediate remediation of existing flood threats statewide.

## **Other Issues**

**Poorly Maintained Levees** - Poorly maintained levees should remain eligible for repair. DWR should consider maintenance efforts in its prioritization, but should not hold a local agency accountable for problems caused by regulatory delay or obstruction.

**Cost-Benefit Analysis** – Levee repairs should not automatically receive low priority based solely on a lower cost-benefit ratio, as the Administration's proposal suggests. Such a policy strongly biases the levee program against rural communities. Priority criteria should also include project readiness, availability of both local and federal funding, and consistency with the State Plan of Flood Control.

**Cost Sharing on Sediment Removal** – Sediment removal in the Sacramento River Flood Control Project is a state responsibility (Water Code Section 8361) and should not require a local cost share.

**Flowage Easements** – Oppose the unfettered use of levee repair funds to purchase flowage easements on private property, and particularly the use of those funds as a substitute for levee repairs, outside of the existing plan of flood control. If DWR is contemplating changes to the Sacramento River Flood Control System, that policy should be clarified and provided with separate and appropriately earmarked funds.

## Flood Control System Subaccount

### **Lower Limit on Expenditures**

Support funding for the state cost share of the projects identified in this section. However, this section allocates \$200 million while the specific projects are earmarked at \$115 million, leaving up to \$85 million for cost overruns or other uses as the Legislature sees fit. We recommend this section be reduced to no more than \$125 million, and have additional funds re-directed at key programs such as levee repair and improvement and sediment removal or to specific system upgrades.

### **City/County Indemnification**

This section requires cities and counties to indemnify the state for flood control system improvements. This policy places an unreasonable burden on local governments who cannot possibly afford payments similar to recent flood settlements.

To the extent that DWR wishes to “link” local land-use decisions to flood liability, we find this to be a blunt approach to that problem because it relaxes the necessary pressure on the state to put an end to decades of neglect of federal levees. The best and surest way to address the state’s newfound liability is to heed the admonition of the *Paterno* court and establish a “reasonable plan of flood control” that provides the appropriate tools to maintain levees and flood channels.

## Delta Subventions and Special Projects

Support project funding in this area to maintain levees in the Delta that are critical to the California’s water supply and the safety of local residents. This support is contingent on two proposed changes to the Governor’s proposal:

- The \$60 million for Delta subventions should be eliminated from both bonds. This is a maintenance program and is therefore an inappropriate use of bond funds.
- Program requirements for ecosystem restoration (AB 360) should be eliminated. Over the last five years DWR spent 28% of the funds designated for Delta flood control on habitat restoration projects.



### Flood Control Subventions

The statewide program for flood control subventions is a capital program supported by Senate Republicans. More funding is needed in this area, whether through this bond measure or a match from the General Fund. According to DWR figures, the state already owes \$237 million to local jurisdictions for past projects, so the \$250 million allocated in the 2006 bond likely will be exhausted by the end of the calendar year. A proposal to meet the full needs of this program should be outlined as part of this measure.

### Floodplain Mapping Program

Consideration should be given to support of the mapping program as a scientific means of assessing flood risk. Mapping also carries with it a number of reasonable federal guidelines related to development within the 100-year floodplain.

### Floodway Corridor Program

This program is a conspicuous example of what has become of flood control in this state – a needlessly expensive endeavor that places greater value on land purchases and wildlife set-asides than repairing levees and should be eliminated.

As an example, DWR presented the Natural Resources and Water Committee with details of a project on the Sacramento River at Hamilton City. That project replaces 6.8 miles at a total cost of \$44 million. That averages \$6.5 million per levee mile, about 50% higher than typical repair costs. The project also took years in the planning and approval stages and is still 2 ½ years from awarding a contract for levee construction, three months after an accompanying re-vegetation program is scheduled for completion.

The Floodway Corridor program is strikingly similar to the former Floodplain Corridor program, under which the state contributed \$17.5 million in 2001 to a nonprofit group for the purchase of Staten Island in the Delta. According to recent news reports, the new owners have failed to maintain 70% of the surrounding levees, despite a specific provision in the project agreement to keep sufficient moneys in a trust fund for levee maintenance. This measure contains the same provision, and there is no reason to believe DWR will hold program participants accountable this time.



## Integrated Regional Water Management

### Regional Water Management Program

#### **Address Both Sides of the Water Equation**

While we support local and regional water investments, we do not consider Integrated Regional Water Management (IRWM) or the implementation of the latest California Water Plan, Bulletin 160-05 a panacea for California's water shortage. Growth is coming to this state, and while effective water management is helpful California also needs significant new water supplies to maintain our quality of life. In prior generations, California's political leaders acknowledged their necessary role in guiding the construction of water storage and conveyance; today, with all of the difficulties facing water development there is an even greater need for such leadership.

#### **Reduce Funding, Mandates**

The Administration's proposal to reduce funding for this program from \$1 billion to \$500 million is the correct thing to do. We also recommend that any funds for IRWM be administered according to the existing IRWM guidelines, and that any potential changes be debated in a policy bill later this year. Water agencies are virtually unanimous in their concern that this proposal is too restrictive and blocks many of the partnerships that spring from local initiative.

We are also concerned about the exclusion of levee maintenance and repair in the IRWM program. We will oppose any effort to starve levee maintenance to make a case for new taxes.

#### **Eligibility of Nonprofits**

We oppose the eligibility of nonprofit organizations for "applicant" status in the IRWM program. We further recommend that nonprofit participation in such plans be limited to 5% of the regional funding.

Leaving unspecified amounts of money to nonprofits creates an incentive for groups to lobby local water agencies for these funds. Putting together an integrated water plan among multiple agencies is difficult enough; these funds should be as free from outside political influences as possible.

## Statewide Water Management Program

### **Surface Storage Construction Assurances**

The Administration has proposed amending SB 1166 to provide a continuous appropriation for surface storage construction funds. While this change is supportable, there are concerns with the Administration's desire to revoke the continuous project authorization. In its response to questions from the Natural Resources and Water Committee hearing of February 14, the Administration expressed a desire to allow "legislative oversight of any final decision to construct any of the CALFED surface storage facilities." Given that such decisions will be left to future Legislatures with no part in this agreement, we have little confidence that these funds will be used for their intended purpose.

Senate Republicans recommend DWR be granted both a continuous authorization to participate in construction of one of the CALFED facilities and a continuous appropriation of those funds. SB 1166 should also provide that if no projects are approved, the funds earmarked in this section will not be used for any other purpose.

### **Frontload Money for Storage**

There is strong support for the Administration's proposal to shift \$1 billion from the 2010 bond to the 2006 bond for construction of surface water storage. This is a critical need for water supply and more flexible management of water systems.

We also support DWR's stated desire to provide a specific allocation for groundwater storage in this measure.

### **Science**

While there is support for scientific research as a guide to regulatory decision-making, funding this research through a capital-outlay bond is inappropriate. The \$800 million for these programs should be eliminated from this measure, less any portion the Administration wishes to identify as capital outlay for desalination.

### **Ecosystem Restoration**

Ecosystem restoration is a lower priority than the public safety considerations and water infrastructure needs identified in this bill. We recommend the \$700 million in this section be removed or redirected.

The restoration projects identified in this section are potentially enormous in scope but have yet to be defined in any meaningful way. Costs for San Joaquin River restoration run up to \$1 billion but do not provide certainty that the river's anadromous fishery can ever be restored. The Salton Sea restoration study may produce alternatives ranging from \$1 billion to \$35 billion.

As for the Bay Delta, a recent financial review of the CalFed program shows state dollars supported ecosystem restoration more than any other program element. Still, environmental groups complain of a "crash" in the Delta ecosystem and continue to use litigation to delay water projects. We fail to see how the restoration funds in this bond, unlike the hundreds of millions previously committed by California taxpayers, will improve regulatory certainty in the Delta. We oppose further funding of Delta ecosystem restoration until a complete, independent review of past expenditures can demonstrate direct benefits to water users.

#### California Water Resources Investment Fund (WRIF)

The California Water Resources Investment Act of 2006 creates the California Water Resources Investment Program and California Water Resources Investment Fund, supported by a new "water resources capacity charge" imposed on every retail water supplier in the state. This new charge is projected to generate \$5 billion of revenues over the ten-year period of the Strategic Growth Plan, according to the LAO.

As introduced, the bill delegates the responsibility to increase the fee annually to an unelected State Water Commission. It will be presumed to go into effect unless the Legislature acts, by statute, within 60 days after the receipt of the recommendations. Since it must happen so quickly, it will take 2/3 of the legislature to reject the "fee" increase.

#### **Fee vs. Tax**

The bill specifically states that this charge is not a tax, but should be treated as a "fee." We believe it is a tax. There is no effort to proportion the amount of the levy to any benefits conferred to fee payers. Rather, this charge is levied proportionally to all users statewide for projects that may vary widely in their benefits to different regions and their relation to actual water improvements.

There is no voluntary element to the fee – a customer gets hit automatically by virtue of their status as a retail water user.

Senate Republicans have other concerns with the WRIF charge:

- Proposition 13 mandates that tax increases be supported by 2/3 of the Legislature. By calling this “tax” a “fee,” it circumvents Proposition 13.
- The state should not be in the business of taxing basic human necessities such as water.
- There is concern among local water agencies that the creation of this tax will compromise their ability to raise their own rates to finance local water resources improvements.
- While the Governor’s bond proposal is designed to meet needs over a ten-year period, this tax has no corresponding sunset date and goes on in perpetuity.
- There are no constitutional guarantees that revenue generated by this tax will not be redirected for general fund purposes other than those outlined in the bill.
- The notion that 50% of the tax should go to the State of California only to be returned to local water suppliers is misguided. It is far less costly and complicated to allow local water suppliers simply to retain revenue from their rate base.
- This tax is not relevant to the bond package as it has nothing to do with building infrastructure, but will simply fund existing programs. Bottom line – this tax should be eliminated from the bond proposal.

### **Proposition 218**

Senate Republicans are concerned with implementation problems related to the WRIF tax. According to the Association of California Water Agencies (ACWA):

The bill imposes the legal obligation to pay the tax on the water supplier without specifically authorizing the water supplier to collect the tax. Water supplier’s rate increases to collect the tax could be subject to Proposition 218’s notice and hearing procedures. Therefore, water suppliers would be forced to hold

an election under the provision of Proposition 218 or be at risk of a successful Proposition 218 challenge that could preclude them from collecting the fee while still being under the obligation to pay the tax.

There is also question as to whether investor-owned utilities will be able to recoup the tax owed to the state through their rate structures, and how quickly the Public Utilities Commission would allow that to happen.

#### Parks Expenditures (SB 1163/Ackerman)

The Governor proposes \$215 million in facility and infrastructure improvements for the California Department of Parks and Recreation, as contained in SB 1163 (Ackerman). Democrats indicate that number falls woefully short of the state's needs and are supporting Senator Chesbro's \$3.945 billion bond measure, SB 153.

Senate Republicans believe the title of the bond measure in SB 153, "the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2006," is misleading, as it does comparatively little to clean the water or air or create safe neighborhood parks. We question the relative importance of additional government land acquisitions compared to the life-sustaining needs of flood protection and water supply.

While the voters have not had the opportunity in recent years to pay for bonds that significantly improve our levees and water supply systems, they have had the opportunity to vote for plenty of park bond funding, both in 2000 (Prop 12 for \$2.1 billion) and 2002 (Prop 40 for \$2.6 billion). The Legislature should now give voters the opportunity to vote on brick and mortar projects that will keep their families safe.

Traditionally, a department's facilities repair and improvements costs are funded in an annual budget allocation. This allocation would provide for minor facilities repairs and smaller scale capital outlay projects. Major capital outlay and rehabilitation projects have typically been funded by budget augmentations.

In the case of the Department of Parks and Recreation, bond funds (i.e. Prop. 12, Prop. 40) have been used for both minor and major maintenance projects because the department's facilities repair needs outpace the annual budget appropriations. This is primarily due to the Legislature's policy of acquiring land without consideration for the need to maintain the properties.

Of California's 101 million acres of land, approximately 52 million acres are owned by state local and federal governments, and another 27 million acres is set aside for farmland. This leaves only 22 million acres for housing, schools, businesses, and other development. Rather than developing more parks and public access ways, any park bond ought to prioritize funding for the most critical facility repairs and code upgrades, with no additional park development until the State can feasibly fund maintenance on its existing park properties.

# **Assembly California Legislature**

## **2007-08 Second Extraordinary Session SPECIAL COMMITTEE ON WATER LOIS WOLK CHAIR**

### **Informational Hearing AB 8XX (Huffman, Caballero & Wolk) – Water Bonds**

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#### **Background**

The current water bond discussion started in January 2006, when the Governor proposed a package of infrastructure bonds. Those proposals addressed multiple bond needs, and included bonds for flood protection and water supply. The Assembly Committee on Water, Parks & Wildlife held a series of hearings on those bonds and considered a wide range of issues. The background paper for the water bond hearing, which is accessible on the Assembly Water, Parks & Wildlife Committee website, addressed a long list of issues, with many continuing to be discussed today. The table of contents for the 2006 background paper identified the issues:

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In 2006, the Legislature decided to proceed with adopting the flood protection bond, which became the successful Proposition 1E, but deferred further water bond discussions. Proposition 84 also succeeded in providing some funding for water-related infrastructure, such as integrated regional water management and water quality.

When the 2007-08 Legislative Session began, Governor Schwarzenegger and Senator Cogdill again introduced a water bond proposal, SB 59 (Cogdill), to authorize \$2 billion for construction of surface water storage dams at Temperance Flat (San Joaquin River) and the Sites Valley (off-stream storage in the Sacramento River watershed. The \$3.95 billion bond proposal also authorized \$1 billion for the Delta and the remainder for water use efficiency, resource stewardship and groundwater storage. That bill did not proceed past the Senate Natural Resources & Water Committee.

After federal Judge Oliver Wanger (E.D. Cal.-Fresno) restricted Sacramento-San Joaquin Delta (Delta) export pumping by the federal Central Valley Project (CVP) and the State Water Project (SWP) last August, Governor Schwarzenegger called this 2<sup>nd</sup> Extraordinary Session. The Governor identified four issues to consider, including adoption of a water bond ballot measure. In the Assembly, leadership of both parties formed working groups and the Speaker appointed the Special Committee on Water, to consider the water issues identified in the Governor's call for the special session. This Committee held an October 4, 2007, informational hearing on "California's Water System and the Sacramento-San Joaquin Delta," where a wide range of water issues were considered.

The Senate assumed the lead in developing a water bond proposal last fall. The Senate debate focused on how to structure funding for water storage, which included several related issues. First, Senate leadership preferred local decisions on storage, through integrated regional water management, while the Governor advocated State decisions because reservoirs would advance statewide interests. Second, Senator Cogdill started with identifying specific funding for specific reservoirs, while others advocated competitive grants to choose the best reservoir options. Third, Senator Cogdill's SB 59 provided continuous appropriation of storage funding, while other legislators objected to losing all legislative oversight for the new storage program. Ultimately, Senator Perata's SB 2XX, which proposed \$6.835 billion in water project funding, passed its policy/fiscal committee hurdles, but was unable to garner sufficient Republican support to achieve the 2/3 majority required to pass it off the Senate floor.

Following SB 2XX's failure on the floor in October 2007, discussions about water bond proposals moved outside the legislative process. In December 2007, the Governor's Office distributed a proposal. Then, in February 2008, the California Chamber of Commerce submitted a water bond initiative to the Attorney General for title/summary. The Chamber's bond measure proposed authorization for \$11.69 billion, but it was withdrawn a few weeks later. Then, on July 10, Governor Schwarzenegger and Senator Feinstein released a new bond proposal for \$9.285 billion. After some pro-bond rallies, the Speaker reconstituted a water working group to consider the issues raised by the Schwarzenegger-Feinstein bond proposal, culminating in last Thursday's introduction in AB 8XX (Huffman, Caballero, Wolk).

### **Water Bond Funding Needs**

Since 2006, several needs for water bond funding have been identified. Governor Schwarzenegger's Strategic Growth Plan (SGP) identified \$5.95 billion in water supply funding needs. DWR has identified certain funding needs, based on its experience of implementing current programs, such as the integrated regional water management (IRWM) grant program. Finally, several other entities, with responsibilities for particular water resources, have identified additional funding needs. Many of those needs are addressed in the array of bond proposals. The identified needs include the following:

- **Sacramento-San Joaquin Delta:** The Delta is in crisis – for many reasons. Its valuable and critical ecosystem is crashing. A federal judge ordered reductions in Delta water exports. Its islands continue sinking below sea-level, renewing concerns about the risk of mass levee failure. Urbanization – and its attendant water quality impacts – is pushing in on the Delta. Sea-level continues to rise, putting more hydraulic and saline pressure on Delta levees and resources. At this point, the State has several efforts developing ideas for addressing the Delta crisis: Bay-Delta Conservation Plan, strategic plan for Delta Vision, Delta Risk Management Strategy, and CALFED Bay-Delta Program. The most imminent plan that may provide some idea as to the needs for the Delta is the Delta Vision Blue Ribbon Task Force's strategic plan, which is due out in October. Casual estimates for Delta needs are in multiple billions of dollars. The SGP estimated bond funding needs for the Delta at \$1 billion. Solano County Water Agency has estimated a need of \$300 million to extend the SWP's North Bay Aqueduct to the Sacramento River.
- **Surface Water Storage:** Need estimates for storage have focused on potential costs for the five reservoirs being examined by the CALFED Bay-Delta Program. Feasibility studies for these reservoirs have not been completed, meaning precise cost estimates are not available. SB 59 (Cogdill) identified \$1 billion in bond funding for each of its two reservoirs. SGP estimated a need of \$2.5 billion in general obligation bonds and an additional \$2 billion from revenue bonds, for the same two reservoirs. If the State invests in additional reservoirs, the costs would increase. Some of the bonds approach this issue from the other direction – making a specified sum available and relying on competition among reservoir proposals to determine how to divide the specified sum.
- **Groundwater:** The needs for groundwater arise in two contexts – storage and quality. Storage involves investments in the infrastructure to add and remove water from groundwater aquifers. Quality involves cleanup of groundwater contamination, from agricultural or industrial pollution.

- **Integrated Regional Water Management:** Since Proposition 50 authorized State funding for IRWM in 2002, there has been a growing demand for State participation in regional water projects. Proposition 84 included \$1 billion in authorized IRWM bond funding.
- **Watershed Protection:** Growing awareness of how upper watershed management (or "source protection") affects water quality has led to growing demand for funding to protect watersheds that produce Californians' drinking water.
- **Recycling and Advanced Treatment Technology:** California set a goal of producing and using 1 million acre-feet of water from recycling by 2010, but has failed to achieve that goal. Growing demand and tightening supply has enhanced attention to the importance of recycling as a key part of California's water supply portfolio. Improved desalination technology also has led to efforts to start building desalination into that portfolio.

## Comparison of Water Bond Proposals Summer 2008

Project Description	Gov-Feinstein Proposal 7/08	AB 8XX
<b>WATER SUPPLY RELIABILITY –</b> <ul style="list-style-type: none"> <li>- integrated regional water management</li> <li>- local/regional conveyance – "connectivity"</li> <li>- drought mitigation projects</li> </ul>	\$2 B <ul style="list-style-type: none"> <li>- \$1.5 B</li> <li>- \$500 M</li> <li>- -0-</li> </ul>	\$2 B <ul style="list-style-type: none"> <li>- \$1.5 B</li> <li>- -0-</li> <li>- \$500 M</li> </ul>
<b>SACRAMENTO-SAN JOAQUIN DELTA SUSTAINABILITY</b> <ul style="list-style-type: none"> <li>- Delta Sustainability</li> <li>- Delta Sustainability</li> </ul>	\$1.9 B <ul style="list-style-type: none"> <li>- \$700 M</li> <li>- \$1.2 B</li> </ul>	\$1.9 B <ul style="list-style-type: none"> <li>- \$700 M</li> <li>- \$1.2 B</li> </ul>
<b>STATEWIDE WATER SYSTEM OPERATIONAL IMPROVEMENT (STORAGE)</b>	\$3 B	\$3 B
<b>CONSERVATION AND WATERSHED PROTECTION</b> <ul style="list-style-type: none"> <li>- Watershed Protection, etc.</li> <li>- Protection Against Invasive Species</li> <li>- Ecosystem Restoration In Fire-Damaged Areas And Fuel Reduction</li> <li>- Fish Passage Improvements</li> </ul>	\$1.335 B <ul style="list-style-type: none"> <li>- \$1 B</li> <li>- \$85 M</li> <li>- \$100 M</li> <li>- \$150 M</li> </ul>	\$1.335 B <ul style="list-style-type: none"> <li>- \$1 B</li> <li>- \$85 M</li> <li>- \$100 M</li> <li>- \$150 M</li> </ul>
<b>GROUNDWATER PROTECTION &amp; WATER QUALITY</b> <ul style="list-style-type: none"> <li>- Groundwater Protection</li> <li>- Small Community Wastewater Projects</li> <li>- Stormwater Management</li> <li>- Disadvantaged Community Drinking Water</li> <li>- Ocean Protection</li> </ul>	\$800 M <ul style="list-style-type: none"> <li>- \$300 M</li> <li>- \$100 M</li> <li>- \$300 M</li> <li>- -0-</li> <li>- \$100 M</li> </ul>	\$1.05 B <ul style="list-style-type: none"> <li>- \$360 M</li> <li>- \$200 M</li> <li>- \$300 M</li> <li>- \$90 M</li> <li>- \$100 M</li> </ul>
<b>WATER RECYCLING &amp; ADVANCED TREATMENT TECHNOLOGY</b>	\$250 M	\$500 M
<b>STATE OF CALIFORNIA WATER USE EFFICIENCY PROGRAM</b>	-0-	\$20 M
<b>TOTAL</b>	<b>\$9.285 B</b>	<b>\$9.805 B</b>

August 26, 2008

# **ABx2 8—Safe, Clean, Reliable Drinking Water Supply Act of 2008**

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LEGISLATIVE ANALYST'S OFFICE

Presented to:

Assembly Special Committee on Water

Hon. Lois Wolk, Chair





## Resources Bonds Funding History

### Resources General Obligation Bonds, 1996 to Present

(In Millions)

Bond	Year	Total Authorization	Previous Appropriations <sup>a</sup>	Proposed Appropriations <sup>b</sup>	Balance (July 2009)
Proposition 204 <sup>c</sup>	1996	\$870	\$811	\$11	\$48
Proposition 12	2000	2,100	2,078	8	14
Proposition 13 <sup>c</sup>	2000	2,095	1,901	68	126
Proposition 40	2002	2,600	2,562	24	14
Proposition 50	2002	3,440	3,220	195	26
Proposition 1B <sup>d</sup>	2006	3,300	558	251	2,492
Proposition 1C <sup>e</sup>	2006	400	14	30	356
Proposition 1E	2006	4,090	587	642	2,862
Proposition 84	2006	5,388	1,708	731	2,949
<b>Totals</b>		<b>\$24,283</b>	<b>\$13,438</b>	<b>\$1,960</b>	<b>\$8,885</b>

<sup>a</sup> Includes funds previously appropriated, statewide bond costs, future-year obligations, and reversions.

<sup>b</sup> Based on Conference Committee version of 2008-09 Budget Bill.

<sup>c</sup> \$125 million was transferred from Proposition 204 to Proposition 13 accounts.

<sup>d</sup> Primarily a transportation bond, this figure shows amounts for air quality.

<sup>e</sup> Proposition 1C includes up to \$400 million for parks.

### Resources General Obligation Bonds, 1996 to Present<sup>a</sup> by Program Area

(In Millions)

	Allocation	Previous Appropriations <sup>b</sup>	Proposed Appropriations <sup>c</sup>	Balance (July 2009)
Parks and recreation	\$4,046	\$2,877	\$103	\$1,066
State parks	(1,094)	(788)	(63)	(243)
Local parks	(2,612)	(1,844)	(38)	(731)
Historic and cultural resources	(240)	(239)	(2)	(-1)
Nature education	(100)	(7)	—	(93)
Water quality	3,647	2,051	215	1,381
Water management	6,843	2,813	953	3,076
Conservation, restoration, and land acquisition	4,711	3,603	374	734
CalFed/delta related	1,686	1,486	64	136
Air quality	3,350	608	251	2,492
<b>Totals</b>	<b>\$24,283</b>	<b>\$13,438</b>	<b>\$1,960</b>	<b>\$8,885</b>

<sup>a</sup> Includes Propositions 204, 12, 13, 40, 50, 1B, 1C, 1E, and 84.

<sup>b</sup> Includes funds previously appropriated, statewide bonds costs, future year obligations, and reversions.

<sup>c</sup> Based on Conference Committee version of 2008-09 Budget Bill.



## ABx2 8 (Huffman, Caballero, and Wolk)— Summary of Provisions

<b>ABx2 8, Proposed Uses of Water Bond Funds</b>	
<i>(In Millions)</i>	
<b>Water Supply Reliability</b>	<b>\$2,000</b>
Integrated Regional Water Management	1,500
Local and Regional Drought Relief	500
<b>Delta Sustainability</b>	<b>\$1,900</b>
Public Benefits and Delta Sustainability	700
Delta Ecosystem	1,200
<b>Statewide Water System Operational Improvement</b>	<b>\$3,000</b>
Public Benefits of Water Storage Projects	3,000
<b>Conservation and Watershed Protection</b>	<b>\$1,335</b>
Ecosystem and Watershed Protection and Restoration	1,000
Invasive Species Control	85
Watershed Restoration in Fire Damaged Areas and Fuel Reduction	100
Improved Fish Passage on Rivers and Streams	150
<b>Groundwater Protection and Water Quality</b>	<b>\$1,050</b>
Prevention or Reduced Contamination of Groundwater	360
Emergency Drinking Water Projects	90
Small Community Wastewater Treatment	200
Stormwater Management and Water Quality	300
Ocean Protection Trust Fund	100
<b>Water Recycling and Advanced Treatment Technologies</b>	<b>\$500</b>
<b>Water Use Efficiency Program</b>	<b>\$20</b>
<b>Total</b>	<b>\$9,805</b>





## **ABx2 8—Summary of Key Provisions**

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- Authorizes \$9.8 billion for specified water supply reliability and water source protection programs.
- All funds are only available upon appropriation by the Legislature.
- Grant funds available under ABx2 8 generally require a 50 percent local cost share. However, in some cases disadvantaged communities are not required to provide this cost share.
- Funds may not be used to fund the costs of design, construction, maintenance, or operation of an “alternate Delta Conveyance.”
- Funds for Delta Sustainability are to be spent according to a comprehensive Delta Sustainability program that “takes into consideration” Delta Vision and the Bay Delta Conservation Plan. The plan for such a program shall be submitted annually to the Legislature.
- The measure authorizes the California Water Commission to select water storage projects for funding (upon legislative appropriation), based on a competitive process. Eligible projects include surface storage projects identified in the CalFed Record of Decision, groundwater storage projects, conjunctive use projects, and regional and local surface storage projects.
- Bond funding for water storage projects shall be used solely to pay for the public benefits of the projects—ecosystem restoration, water quality, and flood control improvements. In general, public bond funds may not exceed 50 percent of project costs.
- Funds for the Salton Sea Watershed shall be spent according to the “Preferred Alternative” developed by the Resources Agency.



## Fiscal Impacts of ABx2 8

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The main fiscal impacts of the measure on state and local governments are the following:

- ***Total and Annual Bond Costs.*** Total bond costs of \$19.1 billion (including \$9.3 billion in interest) to repay the bonds, assuming a 30-year term and 5 percent interest rate. The annual cost to the General Fund would be approximately \$638 million.
- ***Property Tax Impacts.*** Local property tax rolls will be reduced if the bond funds are used for property acquisitions by government agencies and/or nonprofit entities, which do not pay property taxes. The measure does not specify what portion of the funds are to be used for acquisitions, but some provisions provide funds that could be used for land acquisition.
- ***Operational Costs.*** State and local governments will likely use some portion of the available bond funds to acquire or develop new projects that will require annual operations and maintenance costs. These costs are unknown, but could be in the tens of millions of dollars per year.



## Issues for Legislative Consideration

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ABx2 8 provides that the Legislature may enact legislation necessary to implement the programs funded by the proposed bond. Some areas that may need implementing legislation include:

- ***Annual Versus Continuous Appropriation.*** ABx2 8 makes all funds subject to annual appropriation by the Legislature, whereas the Governor's bond proposal continuously appropriates \$3 billion for water storage projects. As a matter of legislative oversight, we recommend that all bond funds be subject to legislative appropriation.
- ***Defining Administrative Costs.*** ABx2 8 caps "administrative costs" at 5 percent of program costs, but does not define these terms. Additional clarification will ensure that only appropriate administrative costs are incurred using bond funds.
- ***Repayment of Grant Funds.*** In several areas, such as funding for invasive species control or the prevention or reduction of groundwater contamination, ABx2 8 requires the adoption of implementing legislation requiring the repayment of grant funds, should the responsible party be identified.
- ***Salton Sea Restoration.*** The Legislature has not adopted a restoration plan for the Salton Sea. Therefore, the Legislature may wish to amend ABx2 8 so that funds for the Salton Sea Restoration can be spent consistent with the Legislature's ultimately adopted approach rather than the alternative developed by the Resources Agency.
- ***Delta Water Conveyance Issues.*** The measure provides substantial funding for "Bay-Delta Sustainability." These funds shall be spent according to a comprehensive "Delta Sustainability Plan" to be developed by the administration, based on general criteria provided in the measure. While considering ABx2 8, it is important that the Legislature ensure that it has ample flexibility in future years to make decisions about the operation of the Delta water supply system and ecosystem restoration program.

**SENATE RULES COMMITTEE**

SB 2XXXXXXX

Office of Senate Floor Analyses

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(916) 651-1520 Fax: (916) 327-4478

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THIRD READING

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Bill No: SB 2XXXXXXX

Author: Cogdill (R), et al

Amended: As introduced

Vote: 27 - Urgency

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**SUBJECT:** Safe, Clean, and Reliable Drinking Water Supply Act of  
2010: water quality control plan

**SOURCE:** Author

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**DIGEST:** This bill enacts the Safe, Clean, and Reliable Drinking Water Supply Act of 2010, which, if approved by the voters, authorizes the issuance of bonds in the amount of \$9,400,000,000 pursuant to the State General Obligation Bond Law to finance a safe drinking water and water supply reliability program. This bill provides for the submission of the bond act to the voters at the November 2, 2010, statewide general election.

**ANALYSIS:** The following is an analysis of SB 2XXXXXXX provided by the Senate Natural Resources and Water Committee:

This bill enacts the Safe, Clean, and Reliable Drinking Water Supply Act of 2010, and sends to the voters for approval at the November 2, 2010, statewide general election a \$9.4 billion bond measure. The bill also implements a specified strategic plan relating to the sustainable management of the Sacramento-San Joaquin Delta; however, this policy change is not discussed in this document.

This bill proposes funding for a variety of purposes, including water supply reliability, delta sustainability, water system operational improvement, conservation and watershed protection, groundwater protection, and water

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recycling. The allocations are summarized in Figure 1 and a brief summary of each is included below; however, a few general provisions of the bill are worth noting here. First, as is somewhat customary, this bill caps bond funds available for administrative costs at five percent of the amount awarded to a program. Similarly, the bill places a 10-percent cap on project planning and monitoring costs. Second, the bill specifies that none of the bond funds shall be used to pay for the design, construction, operation, or maintenance of Delta conveyance facilities. Third, this bill creates at least two bond issuance “traunches” by authorizing the sale of no more than half of the bonds (\$4.7 billion) before July 1, 2015. Finally, the bill requires non-state cost shares to match many of bond fund allocations.

1. Water Supply Reliability. The bill provides \$1.1 billion for competitive grants and expenditures to improve integrated regional water management; \$400 million for local conveyance projects; and \$400 million for local drought relief projects.
  - A. Integrated regional water management funding is tied to implementation of an adopted integrated regional water management plan (except for \$200 million that is set aside for interregional projects) and requires a 50-percent local cost share unless the project is to benefit a disadvantaged or economically distressed area. The bill specifies the share of \$900 million to be allocated to each of twelve regions. Of the \$200 million set aside for interregional projects, \$50 million is to be used for recreation and fish and wildlife enhancement at State Water Project facilities.
  - B. Local conveyance projects must be consistent with an adopted integrated regional water management plan, must provide specified benefits (e.g., mitigate conditions of groundwater overdraft, or improve water security from drought or natural disasters), and require a 50-percent non-state cost share of unless the project is to benefit a disadvantaged or economically distressed area.

**Figure 1 – Allocation of Bond Proceeds under SB 2**

<b>Purpose</b>	<b>Amount (in millions)</b>
<b>Water Supply Reliability</b>	<b>\$1,900</b>
<i>Integrated regional water management</i>	<i>(\$1,100)</i>
<i>Local regional conveyance projects</i>	<i>(\$400)</i>
<i>Local drought relief projects</i>	<i>(\$400)</i>
<b>Delta Sustainability</b>	<b>\$2,000</b>

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<i>Public benefits – including water supply protection; water flow/quality</i>	(\$500)
<i>Delta protection, conservation, and restoration projects (no lead agency specified)</i>	(\$1,500)
<b>Water System Operational Improvement*</b>	<b>\$3,000</b>
<b>Conservation and Watershed Protection</b>	<b>\$1,500</b>
<i>Invasive species control (Dept of Fish &amp; Game)</i>	(\$65)
<i>Coastal county watersheds (State Coastal Conservancy)</i>	(\$200)
<i>Water for migratory birds (Wildlife Conservation Board)</i>	(\$20)
<i>Protection/restoration of watersheds for endangered and threatened species (Wildlife Conservation Board)</i>	(\$100)
<i>Various conservancies (various conservancies)</i>	(\$400)
<i>Forest fuel reduction (Department of Forestry &amp; Fire Protection)</i>	(\$100)
<i>Klamath River dam removal (Resources Agency)</i>	(\$250)
<i>Siskiyou County economic development (BT&amp;H Agency)</i>	(\$10)
<i>Waterfowl habitat (Dept of Fish &amp; Game)</i>	(\$5)
<i>Salmon fish passage (Resources Agency)</i>	(\$60)
<i>Unallocated</i>	(\$290)
<b>Groundwater Protection and Water Quality</b>	<b>\$500</b>
<i>Groundwater cleanup for drinking water (Dept Public Health)</i>	(\$170)
<i>Disadvantaged communities (Dept of Public Health)</i>	(\$45)
<i>Small community wastewater treatment (State Water Resources Control Board – SWRCB))</i>	(\$95)
<i>Stormwater management (SWRCB)</i>	(\$145)
<i>Ocean protection (State Coastal Conservancy)</i>	(\$45)
<b>Water Recycling</b>	<b>\$500</b>
<i>Water recycling projects</i>	(\$250)
<i>Water conservation and efficiency</i>	(\$250)
<b>Total</b>	<b>\$9,400</b>

\*Continuously appropriated to the California Water Commission (all other amounts subject to legislative appropriation to the Department of Water Resources (DWR) unless an alternative lead agency is identified).

- C. Local drought relief projects must be consistent with an adopted integrated regional water management plan, and must include one or more of certain specified types of projects (e.g., water efficiency and conservation projects, water recycling and related infrastructure, stormwater capture, or groundwater cleanup). Additionally, projects must provide a sustainable water supply that does not contribute to groundwater overdraft or increase surface diversion, and must be capable of being operational within two years of receiving funding. Applicants that can demonstrate substantial past and current investments in conservation and local water projects are to receive funding preference; however, a 50-percent non-state cost share is also required unless the project is to benefit a disadvantaged or economically distressed area (with no more than \$50 million eligible to be awarded to disadvantaged communities and economically distressed areas experiencing economic impacts from drought and from disruptions in delivery from the State Water Project and the

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federal Central Valley Project). For the purposes of this pot of funds, the bill specifies that “drought relief projects” include those that mitigate the impacts of reduction in Delta diversions.

2. Delta Sustainability. The bill provides (1) \$500 million for projects that provide public benefits and support Delta sustainability options; (2) \$1.5 billion for Delta protection, conservation, and restoration projects.
  - A. Projects that provide public benefits and support Delta sustainability options, include projects and supporting scientific studies and assessments that meet specified requirements (e.g. improve levee and flood control facilities; or assist in preserving economically viable and sustainable agriculture and economic activities in the Delta; or provide or improve water quality facilities and other infrastructure). Project grant awardees may include Delta counties and cities. The bill specifies that at least \$50 million is to be available for matching grants for improvements to wastewater treatment facilities upstream of the Delta to improve Delta water quality. Additionally, a project receiving funding from this pot would only be eligible for other bond funding pursuant to SB 2 to the extent that combined state funding from this pot did not exceed 50 percent of total projects costs.
  - B. Delta protection, conservation, and restoration project funds are intended to enhance the sustainability of the Delta ecosystem and, among other things, may develop and implement the Bay Delta Conservation Plan, reduce greenhouse gas emissions from exposed delta soils, or reduce the impacts of mercury contamination of the Delta and its watersheds. Funds are to be made available to, among other entities, the Sacramento-San Joaquin Delta Conservancy (subject to its establishment in other legislation).
3. Statewide Water System Operational Improvement. The bill continuously appropriates \$3 billion to the California Water Commission (Commission) for public benefits associated with water storage projects that (a) improve the operation of the state water system; (b) are cost effective; and (c) provide a net improvement in ecosystem and water quality conditions. The Commission is to develop and adopt, by regulation, methods for quantification and management of “public benefits,” in consultation with DWR, the Department of Fish and Game, and the SWRCB. Eligible public benefits include, but are not limited to, ecosystem improvements such as temperature and flow improvements,



water quality improvements in the Delta or other river systems, flood control benefits, or recreational purposes.

Project selection is to be competitive and based on a public process that ranks potential projects based on the expected return-on-investment as measured by the magnitude of certain public benefits criteria, as specified. Eligible projects include (a) surface storage projects identified in the CALFED Bay-Delta Program Record of Decision (ROD), dated August 28, 2000; (b) groundwater storage projects and groundwater contamination prevention or remediation projects that provide water storage benefits; (c) conjunctive use and reservoir reoperation projects; and (d) local and regional surface storage projects that improve the operation of water systems in the state and provide public benefits.

Other funding requirements for water system operational improvement projects include the following:

- A. No project may be funded that does not provide ecosystem improvements that are at least 50 percent of total public benefits.
- B. By January 1, 2018, a project must meet all of the following conditions to be eligible for funding: (1) all feasibility studies are complete and draft environmental documentation is available to the public; (2) the Commission finds the project is feasible and will advance certain long-term objectives in the Delta; and (3) commitments are in place for not less than 75 percent of the nonpublic benefit cost share of the project. If a project fails to meet these conditions in a timely manner because of litigation, the Commission must extend the deadline accordingly.
- C. Except for the costs of environmental documentation and permitting, no funds are to be made available for projects before December 15, 2012.
- D. Except for environmental documentation and permitting projects (mentioned above), the public benefit cost share of the project may not exceed 50 percent of total costs.

The bill also specifies that:

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1. A joint powers authority subject to this section of the bill shall own, govern, manage, and operate a surface storage project.
2. Surface storage projects receiving funding may be made a unit of the Central Valley Project.
3. Funds approved for surface water storage projects consistent with the CALFED Program ROD, dated August 2000, may be provided to local joint powers authorities, as specified.

Finally, this chapter of the bill (addressing statewide water system operational improvements) may only be amended by voter approval or a two-thirds vote of both houses of the Legislature.

4. Conservation and Watershed Protection. The bill provides \$1.5 billion for watershed protection and restoration projects to be allocated to each of at least 11 different pots (as detailed below), and requires that amounts allocated to projects in certain watersheds must be used in a manner consistent with specified plans or programs associated with that watershed.
  - A. Invasive species control funding (\$65 million) is to be administered by the Department of Fish and Game, with \$35 million to be made available for grants to public agencies to pay for capital expenditures associated with invasive species control (e.g., chlorination facilities, habitat modifications, or monitoring equipment). The bill also specifies that the California Conservation Corps or community conservation corps are to be used for restoration and ecosystem protection projects whenever feasible.
  - B. Coastal county watersheds funding (\$200 million) is to be administered by the State Coastal Conservancy, with not less than \$20 million to be made available for grants to San Diego County and \$20 million for the Santa Ana River Parkway.
  - C. Water for migratory birds funding (\$20 million) is to be administered by the Wildlife Conservation Board (WCB)—either directly or via grants—for acquisition of water rights and the conveyance of water for the benefit of migratory birds on wildlife refuges and wildlife habitat areas (subject to applicable federal laws). The bill specifies that all costs associated with acquisition of water rights by the WCB

must be paid out of the funds designated for the WCB (i.e., no other funding streams may be used to supplement the costs of acquisitions funded by this bond).

- D. Protection/restoration of watersheds for endangered and threatened species funding (\$100 million) is to be administered by the WCB consistent with specified portions of the Fish and Game Code (including requirements to implement or develop a natural community conservation plan).
- E. Various conservancies are to receive specified portions of a \$400 million allocation. The allotments are as follows:
  - (1) \$75 million to the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy and the Santa Monica Mountains Conservancy (for projects in the San Gabriel and Los Angeles River watersheds subject to the San Gabriel and Los Angeles River Watershed and Open Space Plan and/or the Los Angeles River Revitalization Master Plan)
  - (2) \$10 million to the Baldwin Hills Conservancy
  - (3) \$15 million to Santa Monica Bay watershed projects
  - (4) \$50 million to the State Coastal Conservancy (for coastal salmon restoration projects)
  - (5) \$100 million to the Lake Tahoe Conservancy (for the Lake Tahoe Environment Improvement Program)
  - (6) \$75 million to the Sierra Nevada Conservancy (for various purposes, as specified)
  - (7) \$75 million to Salton Sea restoration projects
- F. Forest fuel reduction funding (\$100 million) is to be administered by the Department of Forestry and Fire Protection for direct expenditures or grants for fuel treatment and forest restoration projects to protect watersheds tributary to dams or reservoirs from adverse impacts of fire and erosion, to promote forest health in those watersheds, to protect life and property, to provide for climate change

adaptation, and reduce total wildfire costs and losses. The funds are to be allocated as follows:

- (1) \$67 million for technical assistance and grants to public agencies and nonprofits for the purpose of fuel treatment.
  - (2) \$25 million for technical assistance and grants and loans for fuel treatment and reforestation projects to eligible landowners, as specified, consistent with the California Forest Improvement Act of 1978.
- G. Klamath River dam removal funding (\$250 million) is to be available if, and when, a dam removal agreement has been executed between the relevant parties, appropriate determinations have been made by California, Oregon, and the United States under the agreement, ratepayer funds required by the agreement have been authorized and provided, and all other agreement conditions have been met.
- H. Siskiyou County economic redevelopment funding (\$10 million) is to be available, with up to an additional \$10 million available to the county upon submission of materials to the Secretary of Business, Transportation and Housing Agency demonstrating that more is necessary to offset the removal of the dams.
- I. Water fowl habitat funding (\$5 million) is to be administered by the Department of Fish and Game for the purposes of implementing the California Waterfowl Habitat Program, the California Landowner Incentive Program, and the Permanent Wetland Easement Program.
- J. Salmon fish passage funding (\$60 million) is to be administered by the Natural Resources Agency for specified projects authorized in the Central Valley Project Improvement Act that improve salmonid fish passage in the Sacramento River watershed.
- K. The bill leaves \$290 million of the monies for conservation and watershed protection unallocated.
5. Groundwater Protection and Water Quality. The bill provides \$500 million for groundwater protection and water quality, including (a) \$170 million for groundwater cleanup for drinking water; (b) \$45 million for safe drinking water in disadvantaged communities; (c) \$95 million for

wastewater treatment in small communities; (d) \$145 million for stormwater management; and (e) \$45 million for ocean protection.

- A. Groundwater cleanup for drinking water funding is to be administered by the Department of Public Health (DPH) for direct expenditures, grants, and loans for projects to prevent or reduce contamination of groundwater that serves as a source of drinking water. Projects are to be prioritized based on the threat posed by the contamination, the potential for it to spread, the potential of the project to enhance the local water supply reliability, and the potential of the project to increase opportunities for groundwater recharge and optimization of groundwater supplies. The bill requires the DPH give special consideration to other specified factors (e.g., the need to import water in the absence of remediation; or the degree to which the project will serve and economically disadvantaged or distressed community).

Of the \$170 million available in this section of the bill, \$130 million is to be allocated as follows:

- (1) \$80 million to projects that meet all other requirements, but also (a) are part of a basinwide management and remediation plan for which federal funds have been allocated; and (b) the project addresses contamination identified on lists maintained by the Department of Toxics Substances Control or the National Priorities List, as specified.
  - (2) \$50 million to the DPH for grants and direct expenditures to finance emergency and urgent actions on behalf of disadvantaged and economically distressed communities to ensure safe drinking water supplies.
- B. Safe drinking water in disadvantaged communities funding is to be administered by DPH for grants and direct expenditures to finance emergency and urgent actions on behalf of disadvantaged communities to ensure that safe drinking water supplies are available.
- C. Small community wastewater treatment funding is to be administered by the SWRCB for grants for small community wastewater treatment projects to protect water quality that meet the following criteria: (1) the project is for specified wastewater treatment infrastructure; (2)

the project will service a community of no more than 20,000 people; and (3) the project meets other standards that may be established by the SWRCB.

- D. Stormwater management funding is to be administered by the SWRCB for competitive grants and loans for stormwater management and water quality projects that assist in compliance with total maximum daily load implementation plans are consistent with all applicable waste discharge permits. Eligible projects include facilities and infrastructure (e.g., detention and retention basins; dry weather diversion facilities, trash filters, and screens; or treatment wetlands creation and enhancement). Competitive grants shall be considered based on the following criteria:

- (1) Water quality benefits
- (2) Cost effectiveness
- (3) Public health benefits

Except for disadvantaged and economically distressed communities, the projects must provide at least a 50 percent local cost share for grants funds. Finally, local public agencies and joint powers authorities are eligible recipients.

- E. Ocean protection funding is to be administered by the State Coastal Conservancy for projects that meet the requirements of the California Ocean Protection Act, with funds to be allocated by the Ocean Protection Council to public agencies for projects to protect and improve water quality in areas of special biological significance.

6. Water Recycling. The bill provides \$500 million for water recycling, including (a) \$250 million for water recycling and advanced treatment technology projects; and (b) \$250 million for water conservation and efficiency projects and programs.

- A. Water recycling and advanced treatment technology funding is to be available for grants and loans for projects including, but not limited to, contaminant and salt removal projects, dedicated distribution infrastructure for recycled water, and groundwater recharge infrastructure related to recycled water. Projects are to be selected on a competitive basis considering specified criteria, such as water supply reliability improvement, water quality and ecosystem benefits



related to decreased reliance on diversion from the Delta or instream flows, and cost effectiveness.

Not less than 40 percent of the funds are to be available for grants for advanced treatment projects that produce at least 10,000 acre feet of water per year, and projects must have at least a 50-percent local cost share (except for disadvantaged or economically distressed communities).

- B. Water conservation and efficiency funding is to be available for direct expenditures, grants, and loans for urban, and agricultural projects and programs including, as specified. For urban/regional conservation projects and programs, priority is to be given for various specified reasons, including whether a conservation effort is not otherwise locally cost-effective. Grants and loans are to be awarded in a competitive process that considers as primary factors the local and statewide conservation and water use efficiency benefits of the measures proposed. Additionally, agencies that are required to implement only limited conservation requirements under specified law are not eligible for this funding.

Overview of General Obligation Bonds and State Bond Debt and SB 2 (7<sup>th</sup> Extraordinary Session) Debt Service Implications and Considerations

Overview. Bond financing is a type of long-term borrowing that the state uses to raise money for various purposes. The state obtains this money by selling bonds to investors and, in exchange, agrees to repay the investors their money, with interest, according to a specified schedule. This approach is traditionally used to finance major capital outlay projects (e.g., roads, educational facilities, prisons, parks, water projects, and office buildings)—projects that generally provide services over many years, but whose up-front costs can be difficult to pay for all at once.

General obligation bonds (GO bonds) must be approved by the voters and are most often paid off from the state's General Fund, which is largely supported by tax revenues. Because GO bonds are guaranteed by the state's general taxing power, they provide investors with greater certainty of return on their investment, and generally require a lower interest rate, compared to other debt instruments available to the state (e.g., lease-revenue bonds or traditional revenue bonds). However, GO bond repayments are essentially the first funding priority of the General Fund (after K-12 education) and, for



this reason, bonded debt service takes precedence over other spending priorities, be they education, health, social services, prisons, etc.

SB 2 Debt Service Implications and Considerations. The state’s cost for using bonds depends on a number of factors, including the amount sold, their interest rates, the time period over which they are repaid, and their maturity structure, but a useful rule of thumb is that each \$1 borrowed will cost the state about \$2 (assuming a bond issue carries a tax-exempt interest rate of 5 percent and level payments are made over 30 years). This cost, however, is spread over a 30-year period, so the cost after adjusting for inflation is more like \$1.30 for each \$1 borrowed. Thus, unadjusted for inflation, the \$9.4 billion bond contained in SB 2xxxxxxx (henceforth, SB 2 or “the bill”) would cost the state roughly \$18.8 billion over the next 30 years (or \$12.2 billion adjusted for inflation—that is, in “2009 dollars”), requiring annual payments in the neighborhood of \$600 million to \$675 million.

To put this in the larger context, according to the latest data from the Department of Finance (DOF), total annual debt service for the current fiscal year (2009-10) is approximately \$6 billion. This equates to a debt-service ratio (DSR) of approximately 6.7 percent—meaning that \$6.70 out of every \$100 in annual state revenue must be set aside for debt-service payments on bonds. Recognizing that there is currently over \$130 billion of outstanding bonds and authorized, unissued bonds, and making certain assumptions about their future issuance, DOF estimates that in the absence of additional bond authorizations (e.g., SB 2), the state’s DSR will continue to rise for several more years before peaking at around 9.4 percent of revenues, in fiscal year 2014-15 (see Figure 1 below).

By way of comparison, based on the cashflow projections contained in Appendix D, the DOF projects the \$9.4 billion in water bonds proposed under SB 2 would push peak DSR to about 9.5 percent in 2014-2015, a debt burden increase in that year of about 1.5 percent compared to the “allow present trends to continue” scenario. Although, assuming no other bond authorizations, the DSR would begin to decline after 2014-15, staff notes that the “present trends continuing” scenario would see a more rapid decline, whereas the DOF projections for SB 2 would result in a long-term DSR increase of around 7 percent for the remainder of the forecast period.

<b>Projected Infrastructure Debt-Service Ratios (DSRs)</b>
<i>(Dollars in Millions)</i>

CONTINUED

	General Fund Revenue s <sup>a</sup>	Authorized Debt		With SB 2XXXXXXX (Water Bond)	
		Debt Service	DSR	Additional Debt Service	DSR
2009-10	88,805	5,945	6.69%	-	6.69%
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2023-24	162,565	9,227	6.01%	677	6.43%
2024-25	170,694	9,789	5.73%	677	6.13%
2025-26	179,228	9,770	5.45%	677	5.83%
2026-27	188,190	9,455	5.02%	677	5.38%
2027-28	197,599	9,459	4.79%	677	5.13%
2028-29	207,479	9,330	4.50%	677	4.82%
<sup>a</sup> DOF projections.					

The DSR is often used as a general indicator of a state's debt burden and provides a helpful perspective on the affordability of debt; however, it is important to note that there is no "right" level for the DSR. Rather, the right level depends on such things as the state's preferences for infrastructure versus other priorities, and its overall budgetary condition. The critical thing to bear in mind is that each additional dollar of debt service out of a given amount of revenues comes at the expense of a dollar that could be allocated to some other program area. Thus, the "affordability" of more bonds has to be considered not just in terms of their marketability and the DSR, but also in terms of whether the dollar amount of debt service can be accommodated on both a near- and long-term basis within the state budget.

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**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

**SUPPORT:** (Per Senate Budget and Fiscal Review Committee analysis)

Association of California Water Agencies  
California Chamber of Commerce  
California Cotton Growers Association  
California Groundwater Coalition  
California Farm Bureau  
Friant Water Authority  
Kern County Water Agency  
Metropolitan Water District of Southern California  
State Building and Construction Trade Council of California  
Wateruse Association  
Westlands Water District

**OPPOSITION:** (Per Senate Budget and Fiscal Review Committee analysis)

California Rural Legal Assistance Foundation  
California School Employees Association  
Contra Costa Water District  
Environmental Justice Coalition for Water  
Friends of the River  
Planning and Conservation League  
Restore the Delta  
Service Employees International Union  
Sierra Club California  
Yolo County Board of Supervisors

TSM:do 11/2/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

**SENATE RULES COMMITTEE**

SB 2XXXXXXX

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

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THIRD READING

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Bill No: SB 2XXXXXXX

Author: Cogdill (R), et al

Amended: 11/2/09

Vote: 27 - Urgency

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**SUBJECT:** Safe, Clean, and Reliable Drinking Water Supply Act of  
2010: water quality control plan

**SOURCE:** Author

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**DIGEST:** This bill enacts the Safe, Clean, and Reliable Drinking Water Supply Act of 2010, which, if approved by the voters, authorizes the issuance of bonds in the amount of \$9,400,000,000 pursuant to the State General Obligation Bond Law to finance a safe drinking water and water supply reliability program. This bill provides for the submission of the bond act to the voters at the November 2, 2010, statewide general election.

**ANALYSIS:** The following is an analysis of SB 2XXXXXXX provided by the Senate Natural Resources and Water Committee:

This bill enacts the Safe, Clean, and Reliable Drinking Water Supply Act of 2010, and sends to the voters for approval at the November 2, 2010, statewide general election a \$9.4 billion bond measure. The bill also implements a specified strategic plan relating to the sustainable management of the Sacramento-San Joaquin Delta; however, this policy change is not discussed in this document.

This bill proposes funding for a variety of purposes, including water supply reliability, delta sustainability, water system operational improvement, conservation and watershed protection, groundwater protection, and water

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recycling. The allocations are summarized in Figure 1 and a brief summary of each is included below; however, a few general provisions of the bill are worth noting here. First, as is somewhat customary, this bill caps bond funds available for administrative costs at five percent of the amount awarded to a program. Similarly, the bill places a 10-percent cap on project planning and monitoring costs. Second, the bill specifies that none of the bond funds shall be used to pay for the design, construction, operation, or maintenance of Delta conveyance facilities. Third, this bill creates at least two bond issuance “traunches” by authorizing the sale of no more than half of the bonds (\$4.7 billion) before July 1, 2015. Finally, the bill requires non-state cost shares to match many of bond fund allocations.

1. Water Supply Reliability. The bill provides \$1.1 billion for competitive grants and expenditures to improve integrated regional water management; \$400 million for local conveyance projects; and \$400 million for local drought relief projects.
  - A. Integrated regional water management funding is tied to implementation of an adopted integrated regional water management plan (except for \$200 million that is set aside for interregional projects) and requires a 50-percent local cost share unless the project is to benefit a disadvantaged or economically distressed area. The bill specifies the share of \$900 million to be allocated to each of twelve regions. Of the \$200 million set aside for interregional projects, \$50 million is to be used for recreation and fish and wildlife enhancement at State Water Project facilities.
  - B. Local conveyance projects must be consistent with an adopted integrated regional water management plan, must provide specified benefits (e.g., mitigate conditions of groundwater overdraft, or improve water security from drought or natural disasters), and require a 50-percent non-state cost share of unless the project is to benefit a disadvantaged or economically distressed area.

**Figure 1 – Allocation of Bond Proceeds under SB 2**

<b>Purpose</b>	<b>Amount (in millions)</b>
<b>Water Supply Reliability</b>	<b>\$1,900</b>
<i>Integrated regional water management</i>	<i>(\$1,100)</i>
<i>Local regional conveyance projects</i>	<i>(\$400)</i>
<i>Local drought relief projects</i>	<i>(\$400)</i>
<b>Delta Sustainability</b>	<b>\$2,000</b>

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<i>Public benefits – including water supply protection; water flow/quality</i>	(\$500)
<i>Delta protection, conservation, and restoration projects (no lead agency specified)</i>	(\$1,500)
<b>Water System Operational Improvement*</b>	<b>\$3,000</b>
<b>Conservation and Watershed Protection</b>	<b>\$1,500</b>
<i>Invasive species control (Dept of Fish &amp; Game)</i>	(\$65)
<i>Coastal county watersheds (State Coastal Conservancy)</i>	(\$200)
<i>Water for migratory birds (Wildlife Conservation Board)</i>	(\$20)
<i>Protection/restoration of watersheds for endangered and threatened species (Wildlife Conservation Board)</i>	(\$100)
<i>Various conservancies (various conservancies)</i>	(\$400)
<i>Forest fuel reduction (Department of Forestry &amp; Fire Protection)</i>	(\$100)
<i>Klamath River dam removal (Resources Agency)</i>	(\$250)
<i>Siskiyou County economic development (BT&amp;H Agency)</i>	(\$10)
<i>Waterfowl habitat (Dept of Fish &amp; Game)</i>	(\$5)
<i>Salmon fish passage (Resources Agency)</i>	(\$60)
<i>Unallocated</i>	(\$290)
<b>Groundwater Protection and Water Quality</b>	<b>\$500</b>
<i>Groundwater cleanup for drinking water (Dept Public Health)</i>	(\$170)
<i>Disadvantaged communities (Dept of Public Health)</i>	(\$45)
<i>Small community wastewater treatment (State Water Resources Control Board – SWRCB))</i>	(\$95)
<i>Stormwater management (SWRCB)</i>	(\$145)
<i>Ocean protection (State Coastal Conservancy)</i>	(\$45)
<b>Water Recycling</b>	<b>\$500</b>
<i>Water recycling projects</i>	(\$250)
<i>Water conservation and efficiency</i>	(\$250)
<b>Total</b>	<b>\$9,400</b>

\*Continuously appropriated to the California Water Commission (all other amounts subject to legislative appropriation to the Department of Water Resources (DWR) unless an alternative lead agency is identified).

- C. Local drought relief projects must be consistent with an adopted integrated regional water management plan, and must include one or more of certain specified types of projects (e.g., water efficiency and conservation projects, water recycling and related infrastructure, stormwater capture, or groundwater cleanup). Additionally, projects must provide a sustainable water supply that does not contribute to groundwater overdraft or increase surface diversion, and must be capable of being operational within two years of receiving funding. Applicants that can demonstrate substantial past and current investments in conservation and local water projects are to receive funding preference; however, a 50-percent non-state cost share is also required unless the project is to benefit a disadvantaged or economically distressed area (with no more than \$50 million eligible to be awarded to disadvantaged communities and economically distressed areas experiencing economic impacts from drought and from disruptions in delivery from the State Water Project and the

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federal Central Valley Project). For the purposes of this pot of funds, the bill specifies that “drought relief projects” include those that mitigate the impacts of reduction in Delta diversions.

2. Delta Sustainability. The bill provides (1) \$500 million for projects that provide public benefits and support Delta sustainability options; (2) \$1.5 billion for Delta protection, conservation, and restoration projects.
  - A. Projects that provide public benefits and support Delta sustainability options, include projects and supporting scientific studies and assessments that meet specified requirements (e.g. improve levee and flood control facilities; or assist in preserving economically viable and sustainable agriculture and economic activities in the Delta; or provide or improve water quality facilities and other infrastructure). Project grant awardees may include Delta counties and cities. The bill specifies that at least \$50 million is to be available for matching grants for improvements to wastewater treatment facilities upstream of the Delta to improve Delta water quality. Additionally, a project receiving funding from this pot would only be eligible for other bond funding pursuant to SB 2 to the extent that combined state funding from this pot did not exceed 50 percent of total projects costs.
  - B. Delta protection, conservation, and restoration project funds are intended to enhance the sustainability of the Delta ecosystem and, among other things, may develop and implement the Bay Delta Conservation Plan, reduce greenhouse gas emissions from exposed delta soils, or reduce the impacts of mercury contamination of the Delta and its watersheds. Funds are to be made available to, among other entities, the Sacramento-San Joaquin Delta Conservancy (subject to its establishment in other legislation).
3. Statewide Water System Operational Improvement. The bill continuously appropriates \$3 billion to the California Water Commission (Commission) for public benefits associated with water storage projects that (a) improve the operation of the state water system; (b) are cost effective; and (c) provide a net improvement in ecosystem and water quality conditions. The Commission is to develop and adopt, by regulation, methods for quantification and management of “public benefits,” in consultation with DWR, the Department of Fish and Game, and the SWRCB. Eligible public benefits include, but are not limited to, ecosystem improvements such as temperature and flow improvements,



water quality improvements in the Delta or other river systems, flood control benefits, or recreational purposes.

Project selection is to be competitive and based on a public process that ranks potential projects based on the expected return-on-investment as measured by the magnitude of certain public benefits criteria, as specified. Eligible projects include (a) surface storage projects identified in the CALFED Bay-Delta Program Record of Decision (ROD), dated August 28, 2000; (b) groundwater storage projects and groundwater contamination prevention or remediation projects that provide water storage benefits; (c) conjunctive use and reservoir reoperation projects; and (d) local and regional surface storage projects that improve the operation of water systems in the state and provide public benefits.

Other funding requirements for water system operational improvement projects include the following:

- A. No project may be funded that does not provide ecosystem improvements that are at least 50 percent of total public benefits.
- B. By January 1, 2018, a project must meet all of the following conditions to be eligible for funding: (1) all feasibility studies are complete and draft environmental documentation is available to the public; (2) the Commission finds the project is feasible and will advance certain long-term objectives in the Delta; and (3) commitments are in place for not less than 75 percent of the nonpublic benefit cost share of the project. If a project fails to meet these conditions in a timely manner because of litigation, the Commission must extend the deadline accordingly.
- C. Except for the costs of environmental documentation and permitting, no funds are to be made available for projects before December 15, 2012.
- D. Except for environmental documentation and permitting projects (mentioned above), the public benefit cost share of the project may not exceed 50 percent of total costs.

The bill also specifies that:

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1. A joint powers authority subject to this section of the bill shall own, govern, manage, and operate a surface storage project.
2. Surface storage projects receiving funding may be made a unit of the Central Valley Project.
3. Funds approved for surface water storage projects consistent with the CALFED Program ROD, dated August 2000, may be provided to local joint powers authorities, as specified.

Finally, this chapter of the bill (addressing statewide water system operational improvements) may only be amended by voter approval or a two-thirds vote of both houses of the Legislature.

4. Conservation and Watershed Protection. The bill provides \$1.5 billion for watershed protection and restoration projects to be allocated to each of at least 11 different pots (as detailed below), and requires that amounts allocated to projects in certain watersheds must be used in a manner consistent with specified plans or programs associated with that watershed.
  - A. Invasive species control funding (\$65 million) is to be administered by the Department of Fish and Game, with \$35 million to be made available for grants to public agencies to pay for capital expenditures associated with invasive species control (e.g., chlorination facilities, habitat modifications, or monitoring equipment). The bill also specifies that the California Conservation Corps or community conservation corps are to be used for restoration and ecosystem protection projects whenever feasible.
  - B. Coastal county watersheds funding (\$200 million) is to be administered by the State Coastal Conservancy, with not less than \$20 million to be made available for grants to San Diego County and \$20 million for the Santa Ana River Parkway.
  - C. Water for migratory birds funding (\$20 million) is to be administered by the Wildlife Conservation Board (WCB)—either directly or via grants—for acquisition of water rights and the conveyance of water for the benefit of migratory birds on wildlife refuges and wildlife habitat areas (subject to applicable federal laws). The bill specifies that all costs associated with acquisition of water rights by the WCB

must be paid out of the funds designated for the WCB (i.e., no other funding streams may be used to supplement the costs of acquisitions funded by this bond).

- D. Protection/restoration of watersheds for endangered and threatened species funding (\$100 million) is to be administered by the WCB consistent with specified portions of the Fish and Game Code (including requirements to implement or develop a natural community conservation plan).
- E. Various conservancies are to receive specified portions of a \$400 million allocation. The allotments are as follows:
  - (1) \$75 million to the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy and the Santa Monica Mountains Conservancy (for projects in the San Gabriel and Los Angeles River watersheds subject to the San Gabriel and Los Angeles River Watershed and Open Space Plan and/or the Los Angeles River Revitalization Master Plan)
  - (2) \$10 million to the Baldwin Hills Conservancy
  - (3) \$15 million to Santa Monica Bay watershed projects
  - (4) \$50 million to the State Coastal Conservancy (for coastal salmon restoration projects)
  - (5) \$100 million to the Lake Tahoe Conservancy (for the Lake Tahoe Environment Improvement Program)
  - (6) \$75 million to the Sierra Nevada Conservancy (for various purposes, as specified)
  - (7) \$75 million to Salton Sea restoration projects
- F. Forest fuel reduction funding (\$100 million) is to be administered by the Department of Forestry and Fire Protection for direct expenditures or grants for fuel treatment and forest restoration projects to protect watersheds tributary to dams or reservoirs from adverse impacts of fire and erosion, to promote forest health in those watersheds, to protect life and property, to provide for climate change

adaptation, and reduce total wildfire costs and losses. The funds are to be allocated as follows:

- (1) \$67 million for technical assistance and grants to public agencies and nonprofits for the purpose of fuel treatment.
  - (2) \$25 million for technical assistance and grants and loans for fuel treatment and reforestation projects to eligible landowners, as specified, consistent with the California Forest Improvement Act of 1978.
- G. Klamath River dam removal funding (\$250 million) is to be available if, and when, a dam removal agreement has been executed between the relevant parties, appropriate determinations have been made by California, Oregon, and the United States under the agreement, ratepayer funds required by the agreement have been authorized and provided, and all other agreement conditions have been met.
- H. Siskiyou County economic redevelopment funding (\$10 million) is to be available, with up to an additional \$10 million available to the county upon submission of materials to the Secretary of Business, Transportation and Housing Agency demonstrating that more is necessary to offset the removal of the dams.
- I. Water fowl habitat funding (\$5 million) is to be administered by the Department of Fish and Game for the purposes of implementing the California Waterfowl Habitat Program, the California Landowner Incentive Program, and the Permanent Wetland Easement Program.
- J. Salmon fish passage funding (\$60 million) is to be administered by the Natural Resources Agency for specified projects authorized in the Central Valley Project Improvement Act that improve salmonid fish passage in the Sacramento River watershed.
- K. The bill leaves \$290 million of the monies for conservation and watershed protection unallocated.
5. Groundwater Protection and Water Quality. The bill provides \$500 million for groundwater protection and water quality, including (a) \$170 million for groundwater cleanup for drinking water; (b) \$45 million for safe drinking water in disadvantaged communities; (c) \$95 million for

wastewater treatment in small communities; (d) \$145 million for stormwater management; and (e) \$45 million for ocean protection.

- A. Groundwater cleanup for drinking water funding is to be administered by the Department of Public Health (DPH) for direct expenditures, grants, and loans for projects to prevent or reduce contamination of groundwater that serves as a source of drinking water. Projects are to be prioritized based on the threat posed by the contamination, the potential for it to spread, the potential of the project to enhance the local water supply reliability, and the potential of the project to increase opportunities for groundwater recharge and optimization of groundwater supplies. The bill requires the DPH give special consideration to other specified factors (e.g., the need to import water in the absence of remediation; or the degree to which the project will serve and economically disadvantaged or distressed community).

Of the \$170 million available in this section of the bill, \$130 million is to be allocated as follows:

- (1) \$80 million to projects that meet all other requirements, but also (a) are part of a basinwide management and remediation plan for which federal funds have been allocated; and (b) the project addresses contamination identified on lists maintained by the Department of Toxics Substances Control or the National Priorities List, as specified.
  - (2) \$50 million to the DPH for grants and direct expenditures to finance emergency and urgent actions on behalf of disadvantaged and economically distressed communities to ensure safe drinking water supplies.
- B. Safe drinking water in disadvantaged communities funding is to be administered by DPH for grants and direct expenditures to finance emergency and urgent actions on behalf of disadvantaged communities to ensure that safe drinking water supplies are available.
- C. Small community wastewater treatment funding is to be administered by the SWRCB for grants for small community wastewater treatment projects to protect water quality that meet the following criteria: (1) the project is for specified wastewater treatment infrastructure; (2)

the project will service a community of no more than 20,000 people; and (3) the project meets other standards that may be established by the SWRCB.

- D. Stormwater management funding is to be administered by the SWRCB for competitive grants and loans for stormwater management and water quality projects that assist in compliance with total maximum daily load implementation plans are consistent with all applicable waste discharge permits. Eligible projects include facilities and infrastructure (e.g., detention and retention basins; dry weather diversion facilities, trash filters, and screens; or treatment wetlands creation and enhancement). Competitive grants shall be considered based on the following criteria:

- (1) Water quality benefits
- (2) Cost effectiveness
- (3) Public health benefits

Except for disadvantaged and economically distressed communities, the projects must provide at least a 50 percent local cost share for grants funds. Finally, local public agencies and joint powers authorities are eligible recipients.

- E. Ocean protection funding is to be administered by the State Coastal Conservancy for projects that meet the requirements of the California Ocean Protection Act, with funds to be allocated by the Ocean Protection Council to public agencies for projects to protect and improve water quality in areas of special biological significance.

6. Water Recycling. The bill provides \$500 million for water recycling, including (a) \$250 million for water recycling and advanced treatment technology projects; and (b) \$250 million for water conservation and efficiency projects and programs.

- A. Water recycling and advanced treatment technology funding is to be available for grants and loans for projects including, but not limited to, contaminant and salt removal projects, dedicated distribution infrastructure for recycled water, and groundwater recharge infrastructure related to recycled water. Projects are to be selected on a competitive basis considering specified criteria, such as water supply reliability improvement, water quality and ecosystem benefits



related to decreased reliance on diversion from the Delta or instream flows, and cost effectiveness.

Not less than 40 percent of the funds are to be available for grants for advanced treatment projects that produce at least 10,000 acre feet of water per year, and projects must have at least a 50-percent local cost share (except for disadvantaged or economically distressed communities).

- B. Water conservation and efficiency funding is to be available for direct expenditures, grants, and loans for urban, and agricultural projects and programs including, as specified. For urban/regional conservation projects and programs, priority is to be given for various specified reasons, including whether a conservation effort is not otherwise locally cost-effective. Grants and loans are to be awarded in a competitive process that considers as primary factors the local and statewide conservation and water use efficiency benefits of the measures proposed. Additionally, agencies that are required to implement only limited conservation requirements under specified law are not eligible for this funding.

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By way of comparison, based on the cashflow projections contained in Appendix D, the DOF projects the \$9.4 billion in water bonds proposed under SB 2 would push peak DSR to about 9.5 percent in 2014-2015, a debt burden increase in that year of about 1.5 percent compared to the "allow present trends to continue" scenario. Although, assuming no other bond authorizations, the DSR would begin to decline after 2014-15, staff notes that the "present trends continuing" scenario would see a more rapid decline, whereas the DOF projections for SB 2 would result in a long-term DSR increase of around 7 percent for the remainder of the forecast period.

<b>Projected Infrastructure Debt-Service Ratios (DSRs)</b>
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<i>(Dollars in Millions)</i>
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2023-24	162,565	9,227	6.01%	677	6.43%
2024-25	170,694	9,789	5.73%	677	6.13%
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<sup>a</sup> DOF projections.					

The DSR is often used as a general indicator of a state's debt burden and provides a helpful perspective on the affordability of debt; however, it is important to note that there is no "right" level for the DSR. Rather, the right level depends on such things as the state's preferences for infrastructure versus other priorities, and its overall budgetary condition. The critical thing to bear in mind is that each additional dollar of debt service out of a given amount of revenues comes at the expense of a dollar that could be allocated to some other program area. Thus, the "affordability" of more bonds has to be considered not just in terms of their marketability and the DSR, but also in terms of whether the dollar amount of debt service can be accommodated on both a near- and long-term basis within the state budget.

CONTINUED

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

**SUPPORT:** (Per Senate Budget and Fiscal Review Committee analysis)

Association of California Water Agencies  
California Chamber of Commerce  
California Cotton Growers Association  
California Groundwater Coalition  
California Farm Bureau  
Friant Water Authority  
Kern County Water Agency  
Metropolitan Water District of Southern California  
State Building and Construction Trade Council of California  
Wateruse Association  
Westlands Water District

**OPPOSITION:** (Per Senate Budget and Fiscal Review Committee analysis)

California Rural Legal Assistance Foundation  
California School Employees Association  
Contra Costa Water District  
Environmental Justice Coalition for Water  
Friends of the River  
Planning and Conservation League  
Restore the Delta  
Service Employees International Union  
Sierra Club California  
Yolo County Board of Supervisors

TSM:do 11/2/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

**SENATE RULES COMMITTEE**

SB 2XXXXXXX

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

---

THIRD READING

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Bill No: SB 2XXXXXXX

Author: Cogdill (R), et al

Amended: 11/2/09

Vote: 27 - Urgency

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**SUBJECT:** Safe, Clean, and Reliable Drinking Water Supply Act of  
2010: water quality control plan

**SOURCE:** Author

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**DIGEST:** This bill enacts the Safe, Clean, and Reliable Drinking Water Supply Act of 2010, which, if approved by the voters, authorizes the issuance of bonds in the amount of \$9.99 billion pursuant to the State General Obligation Bond Law to finance a safe drinking water and water supply reliability program. This bill provides for the submission of the bond act to the voters at the November 2, 2010, statewide general election.

**ANALYSIS:** The following is an analysis of SB 2XXXXXXX provided by the Senate Natural Resources and Water Committee:

This bill enacts the Safe, Clean, and Reliable Drinking Water Supply Act of 2010, and sends to the voters for approval at the November 2, 2010, statewide general election a \$9.99 billion bond measure. The bill also implements a specified strategic plan relating to the sustainable management of the Sacramento-San Joaquin Delta; however, this policy change is not discussed in this document.

This bill proposes funding for a variety of purposes, including water supply reliability, delta sustainability, water system operational improvement, conservation and watershed protection, groundwater protection, and water

CONTINUED

recycling. The allocations are summarized in Figure 1 and a brief summary of each is included below; however, a few general provisions of the bill are worth noting here. First, as is somewhat customary, this bill caps bond funds available for administrative costs at five percent of the amount awarded to a program. Similarly, the bill places a 10-percent cap on project planning and monitoring costs. Second, the bill specifies that none of the bond funds shall be used to pay for the design, construction, operation, or maintenance of Delta conveyance facilities. Third, this bill creates at least two bond issuance “traunches” by authorizing the sale of no more than half of the bonds (\$4.7 billion) before July 1, 2015. Finally, the bill requires non-state cost shares to match many of bond fund allocations.

1. Water Supply Reliability. The bill provides \$1.1 billion for competitive grants and expenditures to improve integrated regional water management; \$400 million for local conveyance projects; and \$400 million for local drought relief projects.
  - A. Integrated regional water management funding is tied to implementation of an adopted integrated regional water management plan (except for \$200 million that is set aside for interregional projects) and requires a 50-percent local cost share unless the project is to benefit a disadvantaged or economically distressed area. The bill specifies the share of \$900 million to be allocated to each of twelve regions. Of the \$200 million set aside for interregional projects, \$50 million is to be used for recreation and fish and wildlife enhancement at State Water Project facilities.
  - B. Local conveyance projects must be consistent with an adopted integrated regional water management plan, must provide specified benefits (e.g., mitigate conditions of groundwater overdraft, or improve water security from drought or natural disasters), and require a 50-percent non-state cost share of unless the project is to benefit a disadvantaged or economically distressed area.

**Figure 1 – Allocation of Bond Proceeds under SB 2**

<b>Purpose</b>	<b>Amount (in millions)</b>
<b>Water Supply Reliability</b>	<b>\$1,900</b>
<i>Integrated regional water management</i>	<i>(\$1,100)</i>
<i>Local regional conveyance projects</i>	<i>(\$400)</i>
<i>Local drought relief projects</i>	<i>(\$400)</i>
<b>Delta Sustainability</b>	<b>\$2,000</b>

CONTINUED

<i>Public benefits – including water supply protection; water flow/quality</i>	(\$500)
<i>Delta protection, conservation, and restoration projects (no lead agency specified)</i>	(\$1,500)
<b>Water System Operational Improvement*</b>	<b>\$3,000</b>
<b>Conservation and Watershed Protection</b>	<b>\$1,500</b>
<i>Invasive species control (Dept of Fish &amp; Game)</i>	(\$65)
<i>Coastal county watersheds (State Coastal Conservancy)</i>	(\$200)
<i>Water for migratory birds (Wildlife Conservation Board)</i>	(\$20)
<i>Protection/restoration of watersheds for endangered and threatened species (Wildlife Conservation Board)</i>	(\$100)
<i>Various conservancies (various conservancies)</i>	(\$400)
<i>Forest fuel reduction (Department of Forestry &amp; Fire Protection)</i>	(\$100)
<i>Klamath River dam removal (Resources Agency)</i>	(\$250)
<i>Siskiyou County economic development (BT&amp;H Agency)</i>	(\$10)
<i>Waterfowl habitat (Dept of Fish &amp; Game)</i>	(\$5)
<i>Salmon fish passage (Resources Agency)</i>	(\$60)
<i>Unallocated</i>	(\$290)
<b>Groundwater Protection and Water Quality</b>	<b>\$500</b>
<i>Groundwater cleanup for drinking water (Dept Public Health)</i>	(\$170)
<i>Disadvantaged communities (Dept of Public Health)</i>	(\$45)
<i>Small community wastewater treatment (State Water Resources Control Board – SWRCB))</i>	(\$95)
<i>Stormwater management (SWRCB)</i>	(\$145)
<i>Ocean protection (State Coastal Conservancy)</i>	(\$45)
<b>Water Recycling</b>	<b>\$500</b>
<i>Water recycling projects</i>	(\$250)
<i>Water conservation and efficiency</i>	(\$250)
<b>Total</b>	<b>\$9,400</b>

\*Continuously appropriated to the California Water Commission (all other amounts subject to legislative appropriation to the Department of Water Resources (DWR) unless an alternative lead agency is identified).

- C. Local drought relief projects must be consistent with an adopted integrated regional water management plan, and must include one or more of certain specified types of projects (e.g., water efficiency and conservation projects, water recycling and related infrastructure, stormwater capture, or groundwater cleanup). Additionally, projects must provide a sustainable water supply that does not contribute to groundwater overdraft or increase surface diversion, and must be capable of being operational within two years of receiving funding. Applicants that can demonstrate substantial past and current investments in conservation and local water projects are to receive funding preference; however, a 50-percent non-state cost share is also required unless the project is to benefit a disadvantaged or economically distressed area (with no more than \$50 million eligible to be awarded to disadvantaged communities and economically distressed areas experiencing economic impacts from drought and from disruptions in delivery from the State Water Project and the

CONTINUED



federal Central Valley Project). For the purposes of this pot of funds, the bill specifies that “drought relief projects” include those that mitigate the impacts of reduction in Delta diversions.

2. Delta Sustainability. The bill provides (1) \$500 million for projects that provide public benefits and support Delta sustainability options; (2) \$1.5 billion for Delta protection, conservation, and restoration projects.
  - A. Projects that provide public benefits and support Delta sustainability options, include projects and supporting scientific studies and assessments that meet specified requirements (e.g. improve levee and flood control facilities; or assist in preserving economically viable and sustainable agriculture and economic activities in the Delta; or provide or improve water quality facilities and other infrastructure). Project grant awardees may include Delta counties and cities. The bill specifies that at least \$50 million is to be available for matching grants for improvements to wastewater treatment facilities upstream of the Delta to improve Delta water quality. Additionally, a project receiving funding from this pot would only be eligible for other bond funding pursuant to SB 2 to the extent that combined state funding from this pot did not exceed 50 percent of total projects costs.
  - B. Delta protection, conservation, and restoration project funds are intended to enhance the sustainability of the Delta ecosystem and, among other things, may develop and implement the Bay Delta Conservation Plan, reduce greenhouse gas emissions from exposed delta soils, or reduce the impacts of mercury contamination of the Delta and its watersheds. Funds are to be made available to, among other entities, the Sacramento-San Joaquin Delta Conservancy (subject to its establishment in other legislation).
3. Statewide Water System Operational Improvement. The bill continuously appropriates \$3 billion to the California Water Commission (Commission) for public benefits associated with water storage projects that (a) improve the operation of the state water system; (b) are cost effective; and (c) provide a net improvement in ecosystem and water quality conditions. The Commission is to develop and adopt, by regulation, methods for quantification and management of “public benefits,” in consultation with DWR, the Department of Fish and Game, and the SWRCB. Eligible public benefits include, but are not limited to, ecosystem improvements such as temperature and flow improvements,



water quality improvements in the Delta or other river systems, flood control benefits, or recreational purposes.

Project selection is to be competitive and based on a public process that ranks potential projects based on the expected return-on-investment as measured by the magnitude of certain public benefits criteria, as specified. Eligible projects include (a) surface storage projects identified in the CALFED Bay-Delta Program Record of Decision (ROD), dated August 28, 2000; (b) groundwater storage projects and groundwater contamination prevention or remediation projects that provide water storage benefits; (c) conjunctive use and reservoir reoperation projects; and (d) local and regional surface storage projects that improve the operation of water systems in the state and provide public benefits.

Other funding requirements for water system operational improvement projects include the following:

- A. No project may be funded that does not provide ecosystem improvements that are at least 50 percent of total public benefits.
- B. By January 1, 2018, a project must meet all of the following conditions to be eligible for funding: (1) all feasibility studies are complete and draft environmental documentation is available to the public; (2) the Commission finds the project is feasible and will advance certain long-term objectives in the Delta; and (3) commitments are in place for not less than 75 percent of the nonpublic benefit cost share of the project. If a project fails to meet these conditions in a timely manner because of litigation, the Commission must extend the deadline accordingly.
- C. Except for the costs of environmental documentation and permitting, no funds are to be made available for projects before December 15, 2012.
- D. Except for environmental documentation and permitting projects (mentioned above), the public benefit cost share of the project may not exceed 50 percent of total costs.

The bill also specifies that:

CONTINUED

1. A joint powers authority subject to this section of the bill shall own, govern, manage, and operate a surface storage project.
2. Surface storage projects receiving funding may be made a unit of the Central Valley Project.
3. Funds approved for surface water storage projects consistent with the CALFED Program ROD, dated August 2000, may be provided to local joint powers authorities, as specified.

Finally, this chapter of the bill (addressing statewide water system operational improvements) may only be amended by voter approval or a two-thirds vote of both houses of the Legislature.

4. Conservation and Watershed Protection. The bill provides \$1.5 billion for watershed protection and restoration projects to be allocated to each of at least 11 different pots (as detailed below), and requires that amounts allocated to projects in certain watersheds must be used in a manner consistent with specified plans or programs associated with that watershed.
  - A. Invasive species control funding (\$65 million) is to be administered by the Department of Fish and Game, with \$35 million to be made available for grants to public agencies to pay for capital expenditures associated with invasive species control (e.g., chlorination facilities, habitat modifications, or monitoring equipment). The bill also specifies that the California Conservation Corps or community conservation corps are to be used for restoration and ecosystem protection projects whenever feasible.
  - B. Coastal county watersheds funding (\$200 million) is to be administered by the State Coastal Conservancy, with not less than \$20 million to be made available for grants to San Diego County and \$20 million for the Santa Ana River Parkway.
  - C. Water for migratory birds funding (\$20 million) is to be administered by the Wildlife Conservation Board (WCB)—either directly or via grants—for acquisition of water rights and the conveyance of water for the benefit of migratory birds on wildlife refuges and wildlife habitat areas (subject to applicable federal laws). The bill specifies that all costs associated with acquisition of water rights by the WCB

must be paid out of the funds designated for the WCB (i.e., no other funding streams may be used to supplement the costs of acquisitions funded by this bond).

- D. Protection/restoration of watersheds for endangered and threatened species funding (\$100 million) is to be administered by the WCB consistent with specified portions of the Fish and Game Code (including requirements to implement or develop a natural community conservation plan).
- E. Various conservancies are to receive specified portions of a \$400 million allocation. The allotments are as follows:
  - (1) \$75 million to the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy and the Santa Monica Mountains Conservancy (for projects in the San Gabriel and Los Angeles River watersheds subject to the San Gabriel and Los Angeles River Watershed and Open Space Plan and/or the Los Angeles River Revitalization Master Plan)
  - (2) \$10 million to the Baldwin Hills Conservancy
  - (3) \$15 million to Santa Monica Bay watershed projects
  - (4) \$50 million to the State Coastal Conservancy (for coastal salmon restoration projects)
  - (5) \$100 million to the Lake Tahoe Conservancy (for the Lake Tahoe Environment Improvement Program)
  - (6) \$75 million to the Sierra Nevada Conservancy (for various purposes, as specified)
  - (7) \$75 million to Salton Sea restoration projects
- F. Forest fuel reduction funding (\$100 million) is to be administered by the Department of Forestry and Fire Protection for direct expenditures or grants for fuel treatment and forest restoration projects to protect watersheds tributary to dams or reservoirs from adverse impacts of fire and erosion, to promote forest health in those watersheds, to protect life and property, to provide for climate change

adaptation, and reduce total wildfire costs and losses. The funds are to be allocated as follows:

- (1) \$67 million for technical assistance and grants to public agencies and nonprofits for the purpose of fuel treatment.
  - (2) \$25 million for technical assistance and grants and loans for fuel treatment and reforestation projects to eligible landowners, as specified, consistent with the California Forest Improvement Act of 1978.
- G. Klamath River dam removal funding (\$250 million) is to be available if, and when, a dam removal agreement has been executed between the relevant parties, appropriate determinations have been made by California, Oregon, and the United States under the agreement, ratepayer funds required by the agreement have been authorized and provided, and all other agreement conditions have been met.
- H. Siskiyou County economic redevelopment funding (\$10 million) is to be available, with up to an additional \$10 million available to the county upon submission of materials to the Secretary of Business, Transportation and Housing Agency demonstrating that more is necessary to offset the removal of the dams.
- I. Water fowl habitat funding (\$5 million) is to be administered by the Department of Fish and Game for the purposes of implementing the California Waterfowl Habitat Program, the California Landowner Incentive Program, and the Permanent Wetland Easement Program.
- J. Salmon fish passage funding (\$60 million) is to be administered by the Natural Resources Agency for specified projects authorized in the Central Valley Project Improvement Act that improve salmonid fish passage in the Sacramento River watershed.
- K. The bill leaves \$290 million of the monies for conservation and watershed protection unallocated.
5. Groundwater Protection and Water Quality. The bill provides \$500 million for groundwater protection and water quality, including (a) \$170 million for groundwater cleanup for drinking water; (b) \$45 million for safe drinking water in disadvantaged communities; (c) \$95 million for

wastewater treatment in small communities; (d) \$145 million for stormwater management; and (e) \$45 million for ocean protection.

- A. Groundwater cleanup for drinking water funding is to be administered by the Department of Public Health (DPH) for direct expenditures, grants, and loans for projects to prevent or reduce contamination of groundwater that serves as a source of drinking water. Projects are to be prioritized based on the threat posed by the contamination, the potential for it to spread, the potential of the project to enhance the local water supply reliability, and the potential of the project to increase opportunities for groundwater recharge and optimization of groundwater supplies. The bill requires the DPH give special consideration to other specified factors (e.g., the need to import water in the absence of remediation; or the degree to which the project will serve and economically disadvantaged or distressed community).

Of the \$170 million available in this section of the bill, \$130 million is to be allocated as follows:

- (1) \$80 million to projects that meet all other requirements, but also (a) are part of a basinwide management and remediation plan for which federal funds have been allocated; and (b) the project addresses contamination identified on lists maintained by the Department of Toxics Substances Control or the National Priorities List, as specified.
  - (2) \$50 million to the DPH for grants and direct expenditures to finance emergency and urgent actions on behalf of disadvantaged and economically distressed communities to ensure safe drinking water supplies.
- B. Safe drinking water in disadvantaged communities funding is to be administered by DPH for grants and direct expenditures to finance emergency and urgent actions on behalf of disadvantaged communities to ensure that safe drinking water supplies are available.
- C. Small community wastewater treatment funding is to be administered by the SWRCB for grants for small community wastewater treatment projects to protect water quality that meet the following criteria: (1) the project is for specified wastewater treatment infrastructure; (2)

the project will service a community of no more than 20,000 people; and (3) the project meets other standards that may be established by the SWRCB.

- D. Stormwater management funding is to be administered by the SWRCB for competitive grants and loans for stormwater management and water quality projects that assist in compliance with total maximum daily load implementation plans are consistent with all applicable waste discharge permits. Eligible projects include facilities and infrastructure (e.g., detention and retention basins; dry weather diversion facilities, trash filters, and screens; or treatment wetlands creation and enhancement). Competitive grants shall be considered based on the following criteria:

- (1) Water quality benefits
- (2) Cost effectiveness
- (3) Public health benefits

Except for disadvantaged and economically distressed communities, the projects must provide at least a 50 percent local cost share for grants funds. Finally, local public agencies and joint powers authorities are eligible recipients.

- E. Ocean protection funding is to be administered by the State Coastal Conservancy for projects that meet the requirements of the California Ocean Protection Act, with funds to be allocated by the Ocean Protection Council to public agencies for projects to protect and improve water quality in areas of special biological significance.

6. Water Recycling. The bill provides \$500 million for water recycling, including (a) \$250 million for water recycling and advanced treatment technology projects; and (b) \$250 million for water conservation and efficiency projects and programs.

- A. Water recycling and advanced treatment technology funding is to be available for grants and loans for projects including, but not limited to, contaminant and salt removal projects, dedicated distribution infrastructure for recycled water, and groundwater recharge infrastructure related to recycled water. Projects are to be selected on a competitive basis considering specified criteria, such as water supply reliability improvement, water quality and ecosystem benefits



related to decreased reliance on diversion from the Delta or instream flows, and cost effectiveness.

Not less than 40 percent of the funds are to be available for grants for advanced treatment projects that produce at least 10,000 acre feet of water per year, and projects must have at least a 50-percent local cost share (except for disadvantaged or economically distressed communities).

- B. Water conservation and efficiency funding is to be available for direct expenditures, grants, and loans for urban, and agricultural projects and programs including, as specified. For urban/regional conservation projects and programs, priority is to be given for various specified reasons, including whether a conservation effort is not otherwise locally cost-effective. Grants and loans are to be awarded in a competitive process that considers as primary factors the local and statewide conservation and water use efficiency benefits of the measures proposed. Additionally, agencies that are required to implement only limited conservation requirements under specified law are not eligible for this funding.

Overview of General Obligation Bonds and State Bond Debt and SB 2 (7<sup>th</sup> Extraordinary Session) Debt Service Implications and Considerations

Overview. Bond financing is a type of long-term borrowing that the state uses to raise money for various purposes. The state obtains this money by selling bonds to investors and, in exchange, agrees to repay the investors their money, with interest, according to a specified schedule. This approach is traditionally used to finance major capital outlay projects (e.g., roads, educational facilities, prisons, parks, water projects, and office buildings)—projects that generally provide services over many years, but whose up-front costs can be difficult to pay for all at once.

General obligation bonds (GO bonds) must be approved by the voters and are most often paid off from the state's General Fund, which is largely supported by tax revenues. Because GO bonds are guaranteed by the state's general taxing power, they provide investors with greater certainty of return on their investment, and generally require a lower interest rate, compared to other debt instruments available to the state (e.g., lease-revenue bonds or traditional revenue bonds). However, GO bond repayments are essentially the first funding priority of the General Fund (after K-12 education) and, for



this reason, bonded debt service takes precedence over other spending priorities, be they education, health, social services, prisons, etc.

SB 2 Debt Service Implications and Considerations. The state's cost for using bonds depends on a number of factors, including the amount sold, their interest rates, the time period over which they are repaid, and their maturity structure, but a useful rule of thumb is that each \$1 borrowed will cost the state about \$2 (assuming a bond issue carries a tax-exempt interest rate of 5 percent and level payments are made over 30 years). This cost, however, is spread over a 30-year period, so the cost after adjusting for inflation is more like \$1.30 for each \$1 borrowed. Thus, unadjusted for inflation, the \$9.4 billion bond contained in SB 2xxxxxxx (henceforth, SB 2 or "the bill") would cost the state roughly \$18.8 billion over the next 30 years (or \$12.2 billion adjusted for inflation—that is, in "2009 dollars"), requiring annual payments in the neighborhood of \$600 million to \$675 million.

To put this in the larger context, according to the latest data from the Department of Finance (DOF), total annual debt service for the current fiscal year (2009-10) is approximately \$6 billion. This equates to a debt-service ratio (DSR) of approximately 6.7 percent—meaning that \$6.70 out of every \$100 in annual state revenue must be set aside for debt-service payments on bonds. Recognizing that there is currently over \$130 billion of outstanding bonds and authorized, unissued bonds, and making certain assumptions about their future issuance, DOF estimates that in the absence of additional bond authorizations (e.g., SB 2), the state's DSR will continue to rise for several more years before peaking at around 9.4 percent of revenues, in fiscal year 2014-15 (see Figure 1 below).

By way of comparison, based on the cashflow projections contained in Appendix D, the DOF projects the \$9.99 billion in water bonds proposed under SB 2 would push peak DSR to about 9.5 percent in 2014-2015, a debt burden increase in that year of about 1.5 percent compared to the "allow present trends to continue" scenario. Although, assuming no other bond authorizations, the DSR would begin to decline after 2014-15, staff notes that the "present trends continuing" scenario would see a more rapid decline, whereas the DOF projections for SB 2 would result in a long-term DSR increase of around 7 percent for the remainder of the forecast period.

<b>Projected Infrastructure Debt-Service Ratios (DSRs)</b>
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<i>(Dollars in Millions)</i>
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	General Fund Revenue s <sup>a</sup>	Authorized Debt		With SB 2XXXXXXX (Water Bond)	
		Debt Service	DSR	Additional Debt Service	DSR
2009-10	88,805	5,945	6.69%	-	6.69%
2010-11	90,656	6,877	7.59%	-	7.59%
2011-12	87,951	7,549	8.58%	4	8.59%
2012-13	95,049	8,121	8.54%	26	8.57%
2013-14	99,801	9,208	9.23%	78	9.30%
2014-15	104,791	9,825	9.38%	149	9.52%
2015-16	110,031	10,054	9.14%	228	9.34%
2016-17	115,532	10,254	8.88%	326	9.16%
2017-18	121,309	10,461	8.62%	427	8.97%
2018-19	127,374	10,239	8.04%	523	8.45%
2019-20	133,743	10,170	7.60%	607	8.06%
2020-21	140,430	9,907	7.06%	650	7.52%
2021-22	147,452	9,831	6.67%	677	7.13%
2022-23	154,824	9,862	6.37%	677	6.81%
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2028-29	207,479	9,330	4.50%	677	4.82%
<sup>a</sup> DOF projections.					

The DSR is often used as a general indicator of a state's debt burden and provides a helpful perspective on the affordability of debt; however, it is important to note that there is no "right" level for the DSR. Rather, the right level depends on such things as the state's preferences for infrastructure versus other priorities, and its overall budgetary condition. The critical thing to bear in mind is that each additional dollar of debt service out of a given amount of revenues comes at the expense of a dollar that could be allocated to some other program area. Thus, the "affordability" of more bonds has to be considered not just in terms of their marketability and the DSR, but also in terms of whether the dollar amount of debt service can be accommodated on both a near- and long-term basis within the state budget.

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**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

**SUPPORT:** (Per Senate Budget and Fiscal Review Committee analysis)

Association of California Water Agencies  
California Chamber of Commerce  
California Cotton Growers Association  
California Groundwater Coalition  
California Farm Bureau  
Friant Water Authority  
Kern County Water Agency  
Metropolitan Water District of Southern California  
State Building and Construction Trade Council of California  
Wateruse Association  
Westlands Water District

**OPPOSITION:** (Per Senate Budget and Fiscal Review Committee analysis)

California Rural Legal Assistance Foundation  
California School Employees Association  
Contra Costa Water District  
Environmental Justice Coalition for Water  
Friends of the River  
Planning and Conservation League  
Restore the Delta  
Service Employees International Union  
Sierra Club California  
Yolo County Board of Supervisors

TSM:do 11/2/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

**SENATE RULES COMMITTEE**

SB 2XXXXXXX

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

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UNFINISHED BUSINESS

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Bill No: SB 2XXXXXXX

Author: Cogdill (R), et al

Amended: 11/4/09

Vote: 27 - Urgency

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SENATE FLOOR: 28-8, 11/02/09

AYES: Alquist, Ashburn, Benoit, Calderon, Cedillo, Cogdill, Correa,  
Ducheny, Dutton, Florez, Harman, Hollingsworth, Huff, Kehoe, Liu,

Lowenthal, Maldonado, Negrete McLeod, Padilla, Pavley, Price,

Romero, Simitian, Steinberg, Strickland, Walters, Wright, Wyland

NOES: Corbett, Cox, Denham, DeSaulnier, Leno, Wiggins, Wolk, Yee

NO VOTE RECORDED: Aanestad, Hancock, Oropeza, Runner

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**SUBJECT:** Safe, Clean, and Reliable Drinking Water Supply Act of  
2010: water quality control plan

**SOURCE:** Author

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**DIGEST:** This bill enacts the Safe, Clean, and Reliable Drinking Water Supply Act of 2010, which, if approved by the voters, authorizes the issuance of bonds in the amount of \$11.14 billion pursuant to the State General Obligation Bond Law to finance a safe drinking water and water supply reliability program. This bill provides for the submission of the bond act to the voters at the November 2, 2010, statewide general election.

Assembly Amendments increase the overall amount of the bond from \$9.99 billion to \$11.14 billion with the new revenues generally allocated to groundwater protection and water quality projects, and water recycling and advance treatment technology projects.

CONTINUED

**ANALYSIS:** The following is an analysis of SB 2XXXXXXX provided by the Senate Natural Resources and Water Committee:

This bill enacts the Safe, Clean, and Reliable Drinking Water Supply Act of 2010, and sends to the voters for approval at the November 2, 2010, statewide general election an \$11.14 billion bond measure. The bill also implements a specified strategic plan relating to the sustainable management of the Sacramento-San Joaquin Delta; however, this policy change is not discussed in this document.

This bill proposes funding for a variety of purposes, including water supply reliability, delta sustainability, water system operational improvement, conservation and watershed protection, groundwater protection, and water recycling. First, as is somewhat customary, this bill caps bond funds available for administrative costs at five percent of the amount awarded to a program. Similarly, the bill places a 10-percent cap on project planning and monitoring costs. Second, the bill specifies that none of the bond funds shall be used to pay for the design, construction, operation, or maintenance of Delta conveyance facilities. Third, this bill creates at least two bond issuance “traunches” by authorizing the sale of no more than half of the bonds (\$4.7 billion) before July 1, 2015. Finally, the bill requires non-state cost shares to match many of bond fund allocations.

1. Water Supply Reliability. The bill provides \$1.1 billion for competitive grants and expenditures to improve integrated regional water management; \$400 million for local conveyance projects; and \$400 million for local drought relief projects.
  - A. Integrated regional water management funding is tied to implementation of an adopted integrated regional water management plan (except for \$200 million that is set aside for interregional projects) and requires a 50-percent local cost share unless the project is to benefit a disadvantaged or economically distressed area. The bill specifies the share of \$900 million to be allocated to each of twelve regions. Of the \$200 million set aside for interregional projects, \$50 million is to be used for recreation and fish and wildlife enhancement at State Water Project facilities.
  - B. Local conveyance projects must be consistent with an adopted integrated regional water management plan, must provide specified benefits (e.g., mitigate conditions of groundwater overdraft, or

improve water security from drought or natural disasters), and require a 50-percent non-state cost share of unless the project is to benefit a disadvantaged or economically distressed area.

Recent amendments increase the total bond authorization to \$11.14 billion and revise the bond allocation as follows. The revised allocation is reflected in Figure 1 below, with the reallocation of Chapter 9 dollars detailed in Figure 2.

- C. Local drought relief projects must be consistent with an adopted integrated regional water management plan, and must include one or more of certain specified types of projects (e.g., water efficiency and conservation projects, water recycling and related infrastructure, stormwater capture, or groundwater cleanup). Additionally, projects must provide a sustainable water supply that does not contribute to groundwater overdraft or increase surface diversion, and must be capable of being operational within two years of receiving funding. Applicants that can demonstrate substantial past and current investments in conservation and local water projects are to receive funding preference; however, a 50-percent non-state cost share is also required unless the project is to benefit a disadvantaged or economically distressed area (with no more than \$50 million eligible to be awarded to disadvantaged communities and economically distressed areas experiencing economic impacts from drought and from disruptions in delivery from the State Water Project and the federal Central Valley Project). For the purposes of this pot of funds, the bill specifies that “drought relief projects” include those that mitigate the impacts of reduction in Delta diversions.
2. Delta Sustainability. The bill provides (1) \$500 million for projects that provide public benefits and support Delta sustainability options; (2) \$1.5 billion for Delta protection, conservation, and restoration projects.
- A. Projects that provide public benefits and support Delta sustainability options, include projects and supporting scientific studies and assessments that meet specified requirements (e.g. improve levee and flood control facilities; or assist in preserving economically viable and sustainable agriculture and economic activities in the Delta; or provide or improve water quality facilities and other infrastructure). Project grant awardees may include Delta counties and cities. The bill specifies that at least \$50 million is to be available for matching



grants for improvements to wastewater treatment facilities upstream of the Delta to improve Delta water quality. Additionally, a project receiving funding from this pot would only be eligible for other bond funding pursuant to SB 2 to the extent that combined state funding from this pot did not exceed 50 percent of total projects costs.

- B. Delta protection, conservation, and restoration project funds are intended to enhance the sustainability of the Delta ecosystem and, among other things, may develop and implement the Bay Delta Conservation Plan, reduce greenhouse gas emissions from exposed delta soils, or reduce the impacts of mercury contamination of the Delta and its watersheds. Funds are to be made available to, among other entities, the Sacramento-San Joaquin Delta Conservancy (subject to its establishment in other legislation).
3. Statewide Water System Operational Improvement. The bill continuously appropriates \$3 billion to the California Water Commission (Commission) for public benefits associated with water storage projects that (a) improve the operation of the state water system; (b) are cost effective; and (c) provide a net improvement in ecosystem and water quality conditions. The Commission is to develop and adopt, by regulation, methods for quantification and management of “public benefits,” in consultation with DWR, the Department of Fish and Game, and the SWRCB. Eligible public benefits include, but are not limited to, ecosystem improvements such as temperature and flow improvements, water quality improvements in the Delta or other river systems, flood control benefits, or recreational purposes.

Project selection is to be competitive and based on a public process that ranks potential projects based on the expected return-on-investment as measured by the magnitude of certain public benefits criteria, as specified. Eligible projects include (a) surface storage projects identified in the CALFED Bay-Delta Program Record of Decision (ROD), dated August 28, 2000; (b) groundwater storage projects and groundwater contamination prevention or remediation projects that provide water storage benefits; (c) conjunctive use and reservoir reoperation projects; and (d) local and regional surface storage projects that improve the operation of water systems in the state and provide public benefits.

Other funding requirements for water system operational improvement projects include the following:

CONTINUED



- A. No project may be funded that does not provide ecosystem improvements that are at least 50 percent of total public benefits.
- B. By January 1, 2018, a project must meet all of the following conditions to be eligible for funding: (1) all feasibility studies are complete and draft environmental documentation is available to the public; (2) the Commission finds the project is feasible and will advance certain long-term objectives in the Delta; and (3) commitments are in place for not less than 75 percent of the nonpublic benefit cost share of the project. If a project fails to meet these conditions in a timely manner because of litigation, the Commission must extend the deadline accordingly.
- C. Except for the costs of environmental documentation and permitting, no funds are to be made available for projects before December 15, 2012.
- D. Except for environmental documentation and permitting projects (mentioned above), the public benefit cost share of the project may not exceed 50 percent of total costs.

The bill also specifies that:

- 1. A joint powers authority subject to this section of the bill shall own, govern, manage, and operate a surface storage project.
- 2. Surface storage projects receiving funding may be made a unit of the Central Valley Project.
- 3. Funds approved for surface water storage projects consistent with the CALFED Program ROD, dated August 2000, may be provided to local joint powers authorities, as specified.

Finally, this chapter of the bill (addressing statewide water system operational improvements) may only be amended by voter approval or a two-thirds vote of both houses of the Legislature.

- 4. Conservation and Watershed Protection. The bill provides \$1.5 billion for watershed protection and restoration projects to be allocated to each of at least 11 different pots (as detailed below), and requires that amounts

CONTINUED

allocated to projects in certain watersheds must be used in a manner consistent with specified plans or programs associated with that watershed.

- A. Invasive species control funding (\$65 million) is to be administered by the Department of Fish and Game, with \$35 million to be made available for grants to public agencies to pay for capital expenditures associated with invasive species control (e.g., chlorination facilities, habitat modifications, or monitoring equipment). The bill also specifies that the California Conservation Corps or community conservation corps are to be used for restoration and ecosystem protection projects whenever feasible.
- B. Coastal county watersheds funding (\$200 million) is to be administered by the State Coastal Conservancy, with not less than \$20 million to be made available for grants to San Diego County and \$20 million for the Santa Ana River Parkway.
- C. Water for migratory birds funding (\$20 million) is to be administered by the Wildlife Conservation Board (WCB)—either directly or via grants—for acquisition of water rights and the conveyance of water for the benefit of migratory birds on wildlife refuges and wildlife habitat areas (subject to applicable federal laws). The bill specifies that all costs associated with acquisition of water rights by the WCB must be paid out of the funds designated for the WCB (i.e., no other funding streams may be used to supplement the costs of acquisitions funded by this bond).
- D. Protection/restoration of watersheds for endangered and threatened species funding (\$100 million) is to be administered by the WCB consistent with specified portions of the Fish and Game Code (including requirements to implement or develop a natural community conservation plan).
- E. Various conservancies are to receive specified portions of a \$400 million allocation. The allotments are as follows:
  - (1) \$75 million to the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy and the Santa Monica Mountains Conservancy (for projects in the San Gabriel and Los Angeles River watersheds subject to the San Gabriel and Los Angeles

River Watershed and Open Space Plan and/or the Los Angeles River Revitalization Master Plan)

- (2) \$10 million to the Baldwin Hills Conservancy
  - (3) \$15 million to Santa Monica Bay watershed projects
  - (4) \$50 million to the State Coastal Conservancy (for coastal salmon restoration projects)
  - (5) \$100 million to the Lake Tahoe Conservancy (for the Lake Tahoe Environment Improvement Program)
  - (6) \$75 million to the Sierra Nevada Conservancy (for various purposes, as specified)
  - (7) \$75 million to Salton Sea restoration projects
- F. Forest fuel reduction funding (\$100 million) is to be administered by the Department of Forestry and Fire Protection for direct expenditures or grants for fuel treatment and forest restoration projects to protect watersheds tributary to dams or reservoirs from adverse impacts of fire and erosion, to promote forest health in those watersheds, to protect life and property, to provide for climate change adaptation, and reduce total wildfire costs and losses. The funds are to be allocated as follows:
- (1) \$67 million for technical assistance and grants to public agencies and nonprofits for the purpose of fuel treatment.
  - (2) \$25 million for technical assistance and grants and loans for fuel treatment and reforestation projects to eligible landowners, as specified, consistent with the California Forest Improvement Act of 1978.
- G. Klamath River dam removal funding (\$250 million) is to be available if, and when, a dam removal agreement has been executed between the relevant parties, appropriate determinations have been made by California, Oregon, and the United States under the agreement, ratepayer funds required by the agreement have been authorized and provided, and all other agreement conditions have been met.

CONTINUED

- H. Siskyou County economic redevelopment funding (\$10 million) is to be available, with up to an additional \$10 million available to the county upon submission of materials to the Secretary of Business, Transportation and Housing Agency demonstrating that more is necessary to offset the removal of the dams.
  - I. Water fowl habitat funding (\$5 million) is to be administered by the Department of Fish and Game for the purposes of implementing the California Waterfowl Habitat Program, the California Landowner Incentive Program, and the Permanent Wetland Easement Program.
  - J. Salmon fish passage funding (\$60 million) is to be administered by the Natural Resources Agency for specified projects authorized in the Central Valley Project Improvement Act that improve salmonid fish passage in the Sacramento River watershed.
  - K. The bill leaves \$290 million of the monies for conservation and watershed protection unallocated.
5. Groundwater Protection and Water Quality. The bill provides \$500 million for groundwater protection and water quality, including (a) \$170 million for groundwater cleanup for drinking water; (b) \$45 million for safe drinking water in disadvantaged communities; (c) \$95 million for wastewater treatment in small communities; (d) \$145 million for stormwater management; and (e) \$45 million for ocean protection.
- A. Groundwater cleanup for drinking water funding is to be administered by the Department of Public Health (DPH) for direct expenditures, grants, and loans for projects to prevent or reduce contamination of groundwater that serves as a source of drinking water. Projects are to be prioritized based on the threat posed by the contamination, the potential for it to spread, the potential of the project to enhance the local water supply reliability, and the potential of the project to increase opportunities for groundwater recharge and optimization of groundwater supplies. The bill requires the DPH give special consideration to other specified factors (e.g., the need to import water in the absence of remediation; or the degree to which the project will serve and economically disadvantaged or distressed community).

Of the \$170 million available in this section of the bill, \$130 million is to be allocated as follows:

- (1) \$80 million to projects that meet all other requirements, but also
    - (a) are part of a basinwide management and remediation plan for which federal funds have been allocated; and
    - (b) the project addresses contamination identified on lists maintained by the Department of Toxics Substances Control or the National Priorities List, as specified.
  - (2) \$50 million to the DPH for grants and direct expenditures to finance emergency and urgent actions on behalf of disadvantaged and economically distressed communities to ensure safe drinking water supplies.
- B. Safe drinking water in disadvantaged communities funding is to be administered by DPH for grants and direct expenditures to finance emergency and urgent actions on behalf of disadvantaged communities to ensure that safe drinking water supplies are available.
- C. Small community wastewater treatment funding is to be administered by the SWRCB for grants for small community wastewater treatment projects to protect water quality that meet the following criteria: (1) the project is for specified wastewater treatment infrastructure; (2) the project will service a community of no more than 20,000 people; and (3) the project meets other standards that may be established by the SWRCB.
- D. Stormwater management funding is to be administered by the SWRCB for competitive grants and loans for stormwater management and water quality projects that assist in compliance with total maximum daily load implementation plans are consistent with all applicable waste discharge permits. Eligible projects include facilities and infrastructure (e.g., detention and retention basins; dry weather diversion facilities, trash filters, and screens; or treatment wetlands creation and enhancement). Competitive grants shall be considered based on the following criteria:
- (1) Water quality benefits
  - (2) Cost effectiveness
  - (3) Public health benefits

Except for disadvantaged and economically distressed communities, the projects must provide at least a 50 percent local cost share for grants funds. Finally, local public agencies and joint powers authorities are eligible recipients.

- E. Ocean protection funding is to be administered by the State Coastal Conservancy for projects that meet the requirements of the California Ocean Protection Act, with funds to be allocated by the Ocean Protection Council to public agencies for projects to protect and improve water quality in areas of special biological significance.
6. Water Recycling. The bill provides \$500 million for water recycling, including (a) \$250 million for water recycling and advanced treatment technology projects; and (b) \$250 million for water conservation and efficiency projects and programs.
- A. Water recycling and advanced treatment technology funding is to be available for grants and loans for projects including, but not limited to, contaminant and salt removal projects, dedicated distribution infrastructure for recycled water, and groundwater recharge infrastructure related to recycled water. Projects are to be selected on a competitive basis considering specified criteria, such as water supply reliability improvement, water quality and ecosystem benefits related to decreased reliance on diversion from the Delta or instream flows, and cost effectiveness.

Not less than 40 percent of the funds are to be available for grants for advanced treatment projects that produce at least 10,000 acre feet of water per year, and projects must have at least a 50-percent local cost share (except for disadvantaged or economically distressed communities).

- B. Water conservation and efficiency funding is to be available for direct expenditures, grants, and loans for urban, and agricultural projects and programs including, as specified. For urban/regional conservation projects and programs, priority is to be given for various specified reasons, including whether a conservation effort is not otherwise locally cost-effective. Grants and loans are to be awarded in a competitive process that considers as primary factors the local and statewide conservation and water use efficiency benefits



of the measures proposed. Additionally, agencies that are required to implement only limited conservation requirements under specified law are not eligible for this funding.

Overview of General Obligation Bonds and State Bond Debt and SB 2 (7<sup>th</sup> Extraordinary Session) Debt Service Implications and Considerations

Overview. Bond financing is a type of long-term borrowing that the state uses to raise money for various purposes. The state obtains this money by selling bonds to investors and, in exchange, agrees to repay the investors their money, with interest, according to a specified schedule. This approach is traditionally used to finance major capital outlay projects (e.g., roads, educational facilities, prisons, parks, water projects, and office buildings)—projects that generally provide services over many years, but whose up-front costs can be difficult to pay for all at once.

General obligation bonds (GO bonds) must be approved by the voters and are most often paid off from the state's General Fund, which is largely supported by tax revenues. Because GO bonds are guaranteed by the state's general taxing power, they provide investors with greater certainty of return on their investment, and generally require a lower interest rate, compared to other debt instruments available to the state (e.g., lease-revenue bonds or traditional revenue bonds). However, GO bond repayments are essentially the first funding priority of the General Fund (after K-12 education) and, for this reason, bonded debt service takes precedence over other spending priorities, be they education, health, social services, prisons, etc.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

Provides for a \$11.14 general obligation bond.

**SUPPORT:** (Per Senate Budget and Fiscal Review Committee analysis)

Association of California Water Agencies  
California Chamber of Commerce  
California Cotton Growers Association  
California Groundwater Coalition  
California Farm Bureau  
Friant Water Authority  
Kern County Water Agency  
Metropolitan Water District of Southern California

CONTINUED



State Building and Construction Trade Council of California  
Wateruse Association  
Westlands Water District

**OPPOSITION:** (Per Senate Budget and Fiscal Review Committee  
analysis)

California Rural Legal Assistance Foundation  
California School Employees Association  
Contra Costa Water District  
Environmental Justice Coalition for Water  
Friends of the River  
Planning and Conservation League  
Restore the Delta  
Service Employees International Union  
Sierra Club California  
Yolo County Board of Supervisors

TSM:do 11/3/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

Revised – As Amended RN0925406

SENATE THIRD READING

SB 2 X7 (Cogdill)

As Amended November 4, 2009

2/3 vote. Urgency

SENATE VOTE: 28-8

SUMMARY: Authorizes an \$11.14 billion water infrastructure bond for the November 2010 ballot. Specifically, this bill:

- 1) Authorizes a \$11.14 billion water infrastructure bond for the November 2010 ballot, including:

<b>SB 2 x7 as amended</b>	
<b>CHAPTER 5 - Drought Relief</b>	<b>\$455,000,000</b>
- Drought Relief Projects	\$190,000,000
- Economic impact from drought	\$ 90,000,000
- Small Community wastewater	\$ 75,000,000
- Safe Drinking Water Revolving Loan	\$80,000,000
- New River	\$20,000,000
<b>CHAPTER 6 - Regional Supply</b>	<b>\$1,400,000,000</b>
- IRWMP - allocated	\$1,000,000,000
- (Unallocated/Interregional)	\$50,000,000
- Local Conveyance	\$350,000,000
<b>CHAPTER 7 - Delta</b>	<b>\$2,250,000,000</b>
- Projects, including	\$750,000,000
- Ag economy (out of projects pot)	[\$250,000,000]
- Ecosystem/BDCP	\$1,500,000,000
<b>CHAPTER 8 - Statewide Water System Operational Improvement (Water Storage)</b>	<b>\$3,000,000,000</b>
<b>CHAPTER 9 – Conservation and Watershed Protection</b>	<b>\$1,785,000,000</b>
<b>CHAPTER 10 – Groundwater Protection and Water Quality</b>	<b>\$1,000,000,000</b>
<b>CHAPTER 11 - Recycling</b>	<b>\$1,250,000,000</b>
Recycling	\$1,000,000,000
Conservation	\$ 250,000,000
<b>TOTALS</b>	<b>\$11,140,000,000</b>

- 2) Allocates \$1.05 billion to specific regions for the purposes of integrated regional water management, as shown below:
  - a) North Coast \$45 million
  - b) San Francisco Bay: \$132 million
  - c) Central Coast: \$58 million
  - d) Los Angeles \$198 million
  - e) Santa Ana \$128 million
  - f) San Diego \$87 million
  - g) Sacramento \$76 million
  - h) San Joaquin \$64 million
  - i) Tulare/Kern \$70 million
  - j) Lahontan \$51 million
  - k) Colorado River \$47 million
  - l) Mountain Counties \$44 million
  - m) Interregional \$50 million
- 3) Continuously appropriates \$3 billion for competitive grants to pay for "public benefits" in storage projects that benefit the Sacramento-San Joaquin Delta (Delta), including:
  - a) Surface storage projects identified in the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000;
  - b) Groundwater storage projects;
  - c) Conjunctive use and reservoir reoperation projects; and,
  - d) Local and regional surface storage projects that improve the operation of water systems in the state and provide public benefits.
- 4) Specifies conditions for awarding grants for storage projects:
  - a) Defines "public benefits" of storage projects, to include ecosystem improvements, water quality improvements, flood control benefits, emergency response and recreation;
  - b) Limits public-benefit funding to 50%;
  - c) Requires parties that benefit from storage to sign contracts;
  - d) Requires public process and regulations regarding public benefits; and,
  - e) Requires Water Commission to make finding that project is feasible.

- 5) Allocates \$1.785 billion to specific regions and state conservancies in watershed protection category (Chapter 9).

<b>Chapter 9</b>	
State Coastal Conservancy	\$250,000,000
WCB - water rights	\$100,000,000
WCB - watershed	\$215,000,000
LA & San Gabriel River	\$75,000,000
Santa Monica Mts. Cons.	\$75,000,000
Baldwin Hills	\$20,000,000
Santa Monica Bay -SMMC	\$25,000,000
Coastal Salmon	\$50,000,000
Lake Tahoe	\$100,000,000
Farmland Conservation/Watershed Coordinator	\$20,000,000
River Parkways	\$50,000,000
Sierra Nevada	\$75,000,000
Salton Sea	\$100,000,000
Climate Change Planning	\$10,000,000
Watershed Educ. Centers	\$30,000,000
Waterfowl	\$10,000,000
CDF	\$100,000,000
Klamath	\$250,000,000
Siskiyou County	\$20,000,000
CSU Fresno/Cal Poly	\$50,000,000
Ocean Protection	\$50,000,000
CVP - Salmonid	\$60,000,000
Public Infrastructure Mitigation	\$50,000,000
<b>Total</b>	<b>\$1,785,000,000</b>

- 6) Allows up to 10% of funds for costs of project planning and monitoring.
- 7) Bars funding for environmental mitigation or compliance obligations, except in certain circumstances related to groundwater cleanup.
- 8) Bars use of this bond funding for design or construction of Delta water conveyance facilities.
- 9) Preserves "area of origin" and other legal protections for water rights, with specific reference to Sacramento River hydrologic region.
- 10) Allows public utilities and mutual water companies to receive bond funding under certain conditions.
- 11) Creates Safe, Clean and Reliable Drinking Water Supply Fund of 2010 in State Treasury.
- 12) Limits bond funding before July 1, 2015 to \$5.57 billion.

- 13) Specifies conditions for placing measure on ballot.
- 14) Makes legislative findings and defines certain terms.
- 15) Specifies fiscal conditions, including finance committee, for selling bonds.
- 16) Contains an urgency clause allowing this bill to take effect immediately upon enactment.
- 17) Makes bill contingent on enactment of SB 1 X7 (Simitian).

EXISTING LAW authorizes issuance of bonds for wide variety of purposes, including water-related projects.

FISCAL EFFECT: \$11.14 billion

COMMENTS: The Legislature has considered numerous bond proposals in the last three years, since the voters approved a substantial amount of flood and water bond funding in November 2006. Proposals have ranged up to \$15 billion. This bill proposes a \$11.14 billion bond for the same kinds of purposes as bonds that have been proposed in the 18 months – integrated regional water management, the Delta, storage, recycled water, groundwater cleanup and watershed protection. In discussions regarding reform of water policy and Delta management, the Governor has continued to assert that a new water bond, which must be approved by voters, must be part of any comprehensive water bill package. This bill results from discussions dating back several years.

Area of Origin: After substantial discussion of how to preserve the "area of origin" legal protection for Sacramento Valley water right holders, recent amendments have garnered broad support. In essence, this bill includes a simple savings clause for area of origin law, with an additional statement about how the legal doctrine applies to water transferred out of the Sacramento River Hydrologic Region. In addition, the bill uses the other "savings clauses" from the policy bill, SB 1 X7 (Simitian). In fact, these savings clauses are identical in the policy bill and this bond bill.

Public Benefits: This bond introduces a new concept in funding water supply infrastructure – public benefits. Traditionally, water supply infrastructure was funded or financed by those who benefit and receive water supply. This bond introduces water infrastructure for purposes other than just water supply, which will qualify as "public benefits." This bill defines those benefits to include ecosystem improvements, water quality improvements, flood control benefits, emergency response, and recreation. The public pays for its benefits through the financing mechanism of a general obligation bond, which is paid by the General Fund and the State's tax revenues.

Continuous Appropriation: This bond also authorizes a large amount of continuous appropriation for water storage projects. Continuous appropriation limits the Legislature's ability to provide oversight of this funding through the annual budget process. Instead, this bond uses the Water Commission and statutory standards to set the rules for selecting projects for the State's investments in public benefits.

"Economically Distressed Areas": This bill defines the term "economically distressed areas" as those with annual median household income of less than 85% of the statewide median, which is an increase of 5% over the usual definition for disadvantaged communities. It adds required conditions for qualification as an "economically distressed areas" – financial hardship, higher unemployment rate, low population density.

Analysis Prepared by: Alf W. Brandt / W., P. & W. / (916) 319-2096

FN: 0003499

**SENATE RULES COMMITTEE**

SB 2XXXXXXX

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

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UNFINISHED BUSINESS

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Bill No: SB 2XXXXXXX

Author: Cogdill (R), et al

Amended: 11/4/09

Vote: 27 - Urgency

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SENATE FLOOR: 28-8, 11/02/09

AYES: Alquist, Ashburn, Benoit, Calderon, Cedillo, Cogdill, Correa,  
Ducheny, Dutton, Florez, Harman, Hollingsworth, Huff, Kehoe, Liu,  
Lowenthal, Maldonado, Negrete McLeod, Padilla, Pavley, Price,  
Romero, Simitian, Steinberg, Strickland, Walters, Wright, Wyland

NOES: Corbett, Cox, Denham, DeSaulnier, Leno, Wiggins, Wolk, Yee

NO VOTE RECORDED: Aanestad, Hancock, Oropeza, Runner

ASSEMBLY FLOOR: 55-20, 11/4/09 - See last page for vote

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**SUBJECT:** Safe, Clean, and Reliable Drinking Water Supply Act of  
2010: water quality control plan

**SOURCE:** Author

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**DIGEST:** This bill enacts the Safe, Clean, and Reliable Drinking Water Supply Act of 2010, which, if approved by the voters, authorizes the issuance of bonds in the amount of \$11.14 billion pursuant to the State General Obligation Bond Law to finance a safe drinking water and water supply reliability program. This bill provides for the submission of the bond act to the voters at the November 2, 2010, statewide general election.

Assembly Amendments increase the overall amount of the bond from \$9.99 billion to \$11.14 billion with the new revenues generally allocated to groundwater protection and water quality projects, and water recycling and advance treatment technology projects.

CONTINUED



**ANALYSIS:** This bill authorizes an \$11.14 billion water infrastructure bond for the November 2010 ballot.

Specifics of the bill

1. Authorizes a \$11.14 billion water infrastructure bond for the November 2010 ballot, including:

1. SB 2 x7 as amended	
<b>CHAPTER 5 - Drought Relief</b>	<b>\$455,000,000</b>
- Drought Relief Projects	\$190,000,000
- Economic impact from drought	\$ 90,000,000
- Small Community wastewater	\$ 75,000,000
- Safe Drinking Water Revolving Loan	\$80,000,000
- New River	\$20,000,000
<b>CHAPTER 6 - Regional Supply</b>	<b>\$1,400,000,000</b>
- IRWMP - allocated	\$1,000,000,000
- (Unallocated/Interregional)	\$50,000,000
- Local Conveyance	\$350,000,000
<b>CHAPTER 7 - Delta</b>	<b>\$2,250,000,000</b>
- Projects, including	\$750,000,000
- Ag economy (out of projects pot)	[\$250,000,000]
- Ecosystem/BDCP	\$1,500,000,000
<b>CHAPTER 8 - Statewide Water System Operational Improvement (Water Storage)</b>	<b>\$3,000,000,000</b>
<b>CHAPTER 9 – Conservation and Watershed Protection</b>	<b>\$1,785,000,000</b>
<b>CHAPTER 10 – Groundwater Protection and Water Quality</b>	<b>\$1,000,000,000</b>
<b>CHAPTER 11 - Recycling</b>	<b>\$1,250,000,000</b>
Recycling	\$1,000,000,000
Conservation	\$ 250,000,000

CONTINUED

<b>TOTALS</b>	<b>\$11,140,000,000</b>
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2. Allocates \$1.05 billion to specific regions for the purposes of integrated regional water management, as shown below:
  - A. North Coast \$45 million
  - B. San Francisco Bay: \$132 million
    - (1) Central Coast: \$58 million
    - (2) Los Angeles \$198 million
    - (3) Santa Ana \$128 million
    - (4) San Diego \$87 million
    - (5) Sacramento \$76 million
    - (6) San Joaquin \$64 million
    - (7) Tulare/Kern \$70 million
      - (a) Lahontan \$51 million
      - (b) Colorado River \$47 million
      - (c) Mountain Counties \$44 million
      - (d) Interregional \$50 million
  
3. Continuously appropriates \$3 billion for competitive grants to pay for “public benefits” in storage projects that benefit the Sacramento-San Joaquin Delta (Delta), including:
  - A. Surface storage projects identified in the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000.
  - B. Groundwater storage projects.
  - C. Conjunctive use and reservoir reoperation projects.
  - D. Local and regional surface storage projects that improve the operation of water systems in the state and provide public benefits.
  
4. Specifies conditions for awarding grants for storage projects:
  - A. Defines “public benefits” of storage projects, to include ecosystem improvements, water quality improvements, flood control benefits, emergency response and recreation.
  - B. Limits public-benefit funding to 50 percent.

- C. Requires parties that benefit from storage to sign contracts.
  - D. Requires public process and regulations regarding public benefits.
  - E. Requires Water Commission to make finding that project is feasible.
5. Allocates \$1.785 billion to specific regions and state conservancies in watershed protection category (Chapter 9).

<b>Chapter 9</b>	
State Coastal Conservancy	\$250,000,000
WCB - water rights	\$100,000,000
WCB - watershed	\$215,000,000
LA & San Gabriel River	\$75,000,000
Santa Monica Mts. Cons.	\$75,000,000
Baldwin Hills	\$20,000,000
Santa Monica Bay -SMMC	\$25,000,000
Coastal Salmon	\$50,000,000
Lake Tahoe	\$100,000,000
Farmland Conservation/Watershed Coordinator	\$20,000,000
River Parkways	\$50,000,000
Sierra Nevada	\$75,000,000
Salton Sea	\$100,000,000
Climate Change Planning	\$10,000,000
Watershed Educ. Centers	\$30,000,000
Waterfowl	\$10,000,000
CDF	\$100,000,000
Klamath	\$250,000,000
Siskiyou County	\$20,000,000
CSU Fresno/Cal Poly	\$50,000,000
Ocean Protection	\$50,000,000
CVP - Salmonid	\$60,000,000
Public Infrastructure Mitigation	\$50,000,000
<b>Total</b>	<b>\$1,785,000,000</b>

CONTINUED

6. Allows up to 10 percent of funds for costs of project planning and monitoring.
7. Bars funding for environmental mitigation or compliance obligations, except in certain circumstances related to groundwater cleanup.
8. Bars use of this bond funding for design or construction of Delta water conveyance facilities.
9. Preserves “area of origin” and other legal protections for water rights, with specific reference to Sacramento River hydrologic region.
10. Allows public utilities and mutual water companies to receive bond funding under certain conditions.
11. Creates Safe, Clean and Reliable Drinking Water Supply Fund of 2010 in State Treasury.
12. Limits bond funding before July 1, 2015 to \$5.57 billion.
13. Specifies conditions for placing measure on ballot.
14. Makes legislative findings and defines certain terms.
15. Specifies fiscal conditions, including finance committee, for selling bonds.
16. Contains an urgency clause allowing this bill to take effect immediately upon enactment.
17. Makes bill contingent on enactment of SB 1 X7 (Simitian).

Existing law authorizes issuance of bonds for wide variety of purposes, including water-related projects.

#### Comments

The Legislature has considered numerous bond proposals in the last three years, since the voters approved a substantial amount of flood and water bond funding in November 2006. Proposals have ranged up to \$15 billion.

CONTINUED

This bill proposes a \$11.14 billion bond for the same kinds of purposes as bonds that have been proposed in the 18 months – integrated regional water management, the Delta, storage, recycled water, groundwater cleanup and watershed protection. In discussions regarding reform of water policy and Delta management, the Governor has continued to assert that a new water bond, which must be approved by voters, must be part of any comprehensive water bill package. This bill results from discussions dating back several years.

Area of Origin: After substantial discussion of how to preserve the “area of origin” legal protection for Sacramento Valley water right holders, recent amendments have garnered broad support. In essence, this bill includes a simple savings clause for area of origin law, with an additional statement about how the legal doctrine applies to water transferred out of the Sacramento River Hydrologic Region. In addition, the bill uses the other “savings clauses” from the policy bill, SB 1 X7 (Simitian). In fact, these savings clauses are identical in the policy bill and this bond bill.

Public Benefits: This bond introduces a new concept in funding water supply infrastructure – public benefits. Traditionally, water supply infrastructure was funded or financed by those who benefit and receive water supply. This bond introduces water infrastructure for purposes other than just water supply, which will qualify as “public benefits.” This bill defines those benefits to include ecosystem improvements, water quality improvements, flood control benefits, emergency response, and recreation. The public pays for its benefits through the financing mechanism of a general obligation bond, which is paid by the General Fund and the State’s tax revenues.

Continuous Appropriation: This bond also authorizes a large amount of continuous appropriation for water storage projects. Continuous appropriation limits the Legislature’s ability to provide oversight of this funding through the annual budget process. Instead, this bond uses the Water Commission and statutory standards to set the rules for selecting projects for the State’s investments in public benefits.

“Economically Distressed Areas”: This bill defines the term “economically distressed areas” as those with annual median household income of less than 85 percent of the statewide median, which is an increase of five percent over the usual definition for disadvantaged communities. It adds required

conditions for qualification as an “economically distressed areas” – financial hardship, higher unemployment rate, low population density.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

Provides for a \$11.14 general obligation bond.

**SUPPORT:** (Per Senate Budget and Fiscal Review Committee analysis)

Association of California Water Agencies  
California Chamber of Commerce  
California Cotton Growers Association  
California Groundwater Coalition  
California Farm Bureau  
Friant Water Authority  
Kern County Water Agency  
Metropolitan Water District of Southern California  
State Building and Construction Trade Council of California  
Wateruse Association  
Westlands Water District

**OPPOSITION:** (Per Senate Budget and Fiscal Review Committee analysis)

California Rural Legal Assistance Foundation  
California School Employees Association  
Contra Costa Water District  
Environmental Justice Coalition for Water  
Friends of the River  
Planning and Conservation League  
Restore the Delta  
Service Employees International Union  
Sierra Club California  
Yolo County Board of Supervisors

**ASSEMBLY FLOOR:**

AYES: Adams, Arambula, Beall, Blakeslee, Block, Blumenfield, Bradford, Brownley, Caballero, Carter, Conway, Cook, Coto, Davis, De La Torre, De Leon, Emmerson, Eng, Feuer, Fletcher, Fuentes, Fuller, Furutani, Galgiani, Garrick, Gilmore, Hagman, Hall, Harkey, Hernandez, Huffman, Jeffries, Krekorian, Lieu, Bonnie Lowenthal, Ma, Mendoza,

CONTINUED

Nava, Nestande, Nielsen, John A. Perez, V. Manuel Perez, Portantino,  
Ruskin, Salas, Saldana, Silva, Smyth, Solorio, Audra Strickland, Torres,  
Torrico, Tran, Villines, Bass

NOES: Ammiano, Anderson, Bill Berryhill, Buchanan, Chesbro, DeVore,  
Evans, Fong, Gaines, Hayashi, Huber, Knight, Logue, Miller, Monning,  
Niello, Skinner, Swanson, Torlakson, Yamada

NO VOTE RECORDED: Tom Berryhill, Charles Calderon, Hill, Jones,  
Vacancy

TSM:do 11/5/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*