

SENATE BILL**No. 4**

Introduced by Senator SteinbergOctober 28, 2009

An act to amend Sections 6103.1 and 6103.4 of the Government Code, to amend Sections 29702, 29725, 29727, 29733, 29735, 29735.1, 29738, 29741, 29751, 29752, 29754, 29756.5, 29763, 29771, and 29780 of, to add Sections 29703.5, 29722.5, 29722.7, 29728.5, 29759, 29773, 29773.5, and 29778.5 to, to add Division 22.3 (commencing with Section 32300) to, to repeal Section 29762 of, and to repeal and add Sections 29736, 29739, 29753, 29761, 29761.5, and 29764 of, the Public Resources Code, to amend Sections 1052, 1055, 1055.2, 1055.3, 1120, 1525, 1535, 1538, 1550, 1551, 1825, 1845, 2525, 2526, 2550, 2763.5, 5100, 5101, 5103, 5106, and 5107 of, to amend and repeal Section 10631.5 of, to add Sections 1051.1, 1240.5, 1826, 1846, and 1847 to, to add Chapter 2.7 (commencing with Section 348) to Division 1 of, to add Part 2.55 (commencing with Section 10608) and Part 2.11 (commencing with Section 10920) to Division 6 of, to add Division 35 (commencing with Section 85000) to, to repeal Section 5108 of, to repeal Division 26.4 (commencing with Section 79400) of, to repeal and add Section 12924 of, and to repeal and add Part 2.8 (commencing with Section 10800) of Division 6 of, the Water Code, and to amend and supplement the Budget Act of 2009 (Chapter 1 of the 2009–10 Third Extraordinary Session) by amending Items 3940-001-0439 and 3940-001-3058 of Section 2.00 of the Budget Act of 2009, relating to public resources, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 4, as introduced, Steinberg. Public resources.

(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 (Delta).

This bill would revise and recast the provisions of the Delta Protection Act to, among other things, reduce the number of commission members, as specified. The bill would require 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 would require the commission to adopt, not later than July 1, 2011, an economic sustainability plan containing specified elements and would require the commission to review and, as determined to be necessary, amend the plan every 5 years.

The bill would require 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 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 sustainability plan.

The bill would establish in the Natural Resources Agency the Sacramento-San Joaquin Delta Conservancy. The conservancy would be required to act as a 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 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. The conservancy would be required to use conservation easements to accomplish ecosystem restoration whenever feasible. 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 certain 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 economic sustainability projects.

(2) 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 would enact the Sacramento-San Joaquin Delta Reform Act of 2009. The bill would establish the Delta Stewardship Council as an independent agency of the state. 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 bill would require the council, on or before January 1, 2012, to develop, adopt, and commence implementation of a comprehensive management plan for the Delta (Delta Plan), meeting specified requirements. The bill would require 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 prior to taking those actions. By imposing these requirements on a local public agency, the bill would impose a state-mandated local program. The bill would establish an appeal process by which a person may claim that a proposed action is inconsistent with the Delta Plan, as prescribed.

The bill would impose 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.

The bill would establish the Delta Independent Science Board, whose members would be appointed 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 State Water Resources Control Board to establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010. The bill would require the board to develop new flow criteria for the Delta ecosystem, as specified. The board would be required to submit those determinations to the council. The bill would require the board, in consultation with the council, to appoint a special master for the Delta, referred to as the Delta Watermaster. The bill would grant specified authority to the Delta Watermaster.

(3) 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 would repeal that act. The bill would impose requirements on the council in connection with the repeal of that act.

(4) 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, in accordance with specified requirements. The bill would require agricultural water suppliers to implement efficient water management practices. 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 provide that urban retail water suppliers, on and after July 1, 2016, and agricultural water suppliers, on and after July 1, 2013, are not eligible for state water grants or loans unless they comply with the 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.

(5) 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 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 not eligible for state water grants or loans unless the supplier complies with the water management planning requirements established by the bill.

(6) 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.

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 for official services relating to statements of water diversion and use.

(7) Existing law authorizes the State Water Resources Control 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 any technical or monitoring report related to the diversion or use of water by that person or entity. 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.

(8) Existing law authorizes the State Water Resources Control 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, based on substantial evidence, that the public interest and necessity will be served by a determination of rights.

(9) 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 or \$5,000 for each day in which the trespass occurs, as specified, or the highest market value of the water, whichever is the greater amount. The moneys would be required to be deposited in the Water Rights Fund, as specified. The bill would establish the Water Rights Protection Subaccount in the Water Rights Fund. Specified penalties would be required to be deposited in the subaccount. The bill would state legislative intent regarding the expenditure of the moneys in the subaccount.

(10) Existing law, with certain exceptions, requires each person who diverts water after December 31, 1965, to file with the State Water Resources Control Board 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.

This bill would revise the types of water diversions for which the reporting requirement does not apply, including, among other diversions,

a diversion that occurs before January 1, 2009, if certain requirements are met. The bill would delete exceptions to the monthly record requirement, and revise requirements relating to the contents of the statement of diversions and use.

The bill would 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. The board would be authorized to impose the civil liability in accordance with a specified schedule. Funds recovered pursuant to these provisions would be required to be deposited in the Water Rights Fund, as specified.

The bill would authorize the board and the Department of Water Resources to adopt emergency regulations for the electronic filing of reports of water diversion or use that are required to be filed with those respective state agencies under specified statutory provisions.

The 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.

(11) Existing law authorizes the State Water Resources Control 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 increase, as specified, the civil penalties that apply to a person who violates a 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, as specified.

The bill would require 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, 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 board within 6 months after it is required to be filed with the board.

(12) 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, and to require additional monitoring wells under certain circumstances. If the department makes a specified determination with regard to a basin or subbasin, the department would be required to notify the counties within which that basin or subbasin is located. Upon such notification, the counties would be required to take certain action related to groundwater monitoring, thereby imposing a

state-mandated local program. Under certain circumstances, specified entities with authority to assume groundwater monitoring functions with regard to a basin or subbasin would not be eligible for a water grant or loan awarded or administered by the state, unless certain actions occur.

(13) 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.

(14) Existing law, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, an initiative bond act approved by the voters at the November 7, 2006, statewide general election, authorizes the issuance of bonds in the amount of \$5,388,000,000, of which \$1,000,000,000 is made available to the Department of Water Resources, upon appropriation therefor, to meet the long term water needs of the state. Eligible projects are required to implement integrated regional water management plans and include fisheries restoration and protection projects. A portion of these funds may be expended directly or granted by the department to address multiregional needs or issues of statewide significance.

This bill would appropriate \$28,000,000 of these funds to the department for the department to expend, as specified, on the Two-Gates Fish Protection Demonstration Program managed by the United States Bureau of Reclamation. The bill would make a statement of legislative intent to finance the activities of the Delta Stewardship Council and the Sacramento-San Joaquin Delta Conservancy from funds made available pursuant to the Disaster Preparedness and Flood Prevention Bond Act of 2006 and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Bond Act of 2006.

(15) The Budget Act of 2009 made appropriations for the support of the State Water Resources Control Board for the 2009–10 fiscal year, with certain payments from the Water Rights Fund.

This bill would amend and supplement the Budget Act of 2009 by making an additional appropriation from the fund to support water rights enforcement. The bill would, commencing with the 2010–11 fiscal year, continuously appropriate \$3,750,000 on an annual basis only from fee

revenue in the fund to the board for the purpose of funding permanent water rights enforcement positions.

(16) 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: yes. 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, Division 7*
9 *(commencing with Section 13000), or Division 35 (commencing*
10 *with Section 85000) of the Water Code.*

11 SEC. 2. Section 6103.4 of the Government Code is amended
12 to read:

13 6103.4. Section 6103 does not apply to any fee or charge for
14 official services required by Section 100860 of the Health and
15 Safety Code, ~~or Part 5 (commencing with Section 4999) of Division~~
16 ~~2, or Division 7 (commencing with Section 13000), of the Water~~
17 ~~Code.~~

18 SEC. 3. Section 29702 of the Public Resources Code is
19 amended to read:

20 29702. The Legislature further finds and declares that the basic
21 goals of the state for the ~~delta~~ *Delta* are the following:

22 (a) *Achieve the two coequal goals of providing a more reliable*
23 *water supply for California and protecting, restoring, and*
24 *enhancing the Delta ecosystem. The coequal goals shall be*
25 *achieved in a manner that protects and enhances the unique*

1 *cultural, recreational, natural resource, and agricultural values*
2 *of the Delta as an evolving place.*

3 (a)

4 (b) Protect, maintain, and, where possible, enhance and restore
5 the overall quality of the ~~delta~~ Delta environment, including, but
6 not limited to, agriculture, wildlife habitat, and recreational
7 activities.

8 (b) ~~Assure~~

9 (c) Ensure orderly, balanced conservation and development of
10 ~~delta~~ Delta land resources.

11 (e)

12 (d) Improve flood protection by structural and nonstructural
13 means to ensure an increased level of public health and safety.

14 SEC. 4. Section 29703.5 is added to the Public Resources Code,
15 to read:

16 29703.5. The Legislature further finds and declares both of the
17 following:

18 (a) The Delta Protection Commission created pursuant to Section
19 29735 provides an existing forum for Delta residents to engage in
20 decisions regarding actions to recognize and enhance the unique
21 cultural, recreational, and agricultural resources of the Delta. As
22 such, the commission is the appropriate agency to identify and
23 provide recommendations to the Delta Stewardship Council on
24 methods of preserving the Delta as an evolving place as the Delta
25 Stewardship Council develops and implements the Delta Plan.

26 (b) There is a need for the five Delta counties to establish and
27 implement a resources management plan for the Delta and for the
28 Delta Stewardship Council to consider that plan and
29 recommendations of the commission in the adoption of the Delta
30 Plan.

31 SEC. 5. Section 29722.5 is added to the Public Resources Code,
32 to read:

33 29722.5. "Delta Plan" means the plan adopted by the Delta
34 Stewardship Council pursuant to Section 85300 of the Water Code.

35 SEC. 6. Section 29722.7 is added to the Public Resources Code,
36 to read:

37 29722.7. "Economic sustainability plan" means the plan
38 adopted by the commission pursuant to Section 29759.

39 SEC. 7. Section 29725 of the Public Resources Code is
40 amended to read:

1 29725. “Local government” means the Counties of Contra
2 Costa, Sacramento, San Joaquin, Solano, and Yolo, and the Cities
3 of Sacramento, Stockton, Tracy, Antioch, Pittsburg, Isleton,
4 Lathrop, Brentwood, ~~Rio Vista~~, West Sacramento, and Oakley,
5 and any other cities that may be incorporated in the future in the
6 primary zone.

7 SEC. 8. Section 29727 of the Public Resources Code is
8 amended to read:

9 29727. “Port” means the Port of Sacramento and the Port of
10 Stockton, including all the land owned or leased by those ports,
11 *or potential sites identified in the Delta county general plans as*
12 *of January 1, 2010, and otherwise authorized by law.*

13 SEC. 9. Section 29728.5 is added to the Public Resources Code,
14 to read:

15 29728.5. “Resources management plan” means the plan adopted
16 by the commission pursuant to Section 29760.

17 SEC. 10. Section 29733 of the Public Resources Code is
18 amended to read:

19 29733. “Unincorporated towns” means the communities of
20 Walnut Grove, Clarksburg, Courtland, Hood, Locke, *Knightesen*,
21 *Collinsville*, and Ryde.

22 SEC. 11. Section 29735 of the Public Resources Code is
23 amended to read:

24 29735. There is hereby created the Delta Protection
25 Commission consisting of ~~23~~ 15 members as follows:

26 (a) One member of the board of supervisors, or his or her
27 designee, of each of the five counties within the ~~delta~~ *Delta* whose
28 supervisorial district is within the primary zone shall be appointed
29 by the board of supervisors of ~~the county~~ *each of those respective*
30 *counties*.

31 (b) (1) ~~Three~~ Two elected city council members shall be selected
32 and appointed by city selection committees, from ~~regional and~~
33 ~~area councils of government~~ *the appropriate regions specified in*
34 *subparagraphs (A) and (B)*, one in each of the following areas:

35 ~~(A) One from the north delta, consisting of the Counties of Yolo~~
36 ~~and Sacramento.~~

37 ~~(B)~~

38 ~~(A)~~ One from the south ~~delta~~ *Delta*, consisting of the County of
39 San Joaquin.

40 ~~(C)~~

1 (B) One from the west ~~delta Delta, consisting of~~ from either the
2 ~~Counties County of Contra Costa and or the County of Solano, on~~
3 ~~a rotating basis.~~

4 (2) One elected city council member shall be selected and
5 appointed by city selection committees, from regional and area
6 councils of government from the north Delta, consisting of the
7 Counties of Yolo and Sacramento.

8 (2)

9 (3) A city council member appointed pursuant to this
10 subdivision may select a designee for purposes of ~~paragraph (1)~~
11 ~~this subdivision.~~

12 (4) Notwithstanding Section 29736, the term of office of the
13 members selected pursuant to this subdivision shall be two years.

14 (c) ~~(1)~~ One member each from the board of directors of ~~five~~
15 ~~three~~ different reclamation districts that are located within the
16 primary zone who are residents of the ~~delta Delta~~, and who are
17 elected by the trustees of ~~reclamations~~ reclamation districts ~~within~~
18 ~~the following areas:~~ pursuant to paragraphs (1), (2), and (3). Each
19 reclamation district may nominate one director to be a member.
20 The member from an area described in paragraph (1), (2), or (3)
21 shall be selected from among the nominees by a majority vote of
22 the reclamation districts in that area. A member selected pursuant
23 to this subdivision may select a designee for this purpose. For the
24 purposes of this section, each reclamation district shall have one
25 vote. Reclamation district members shall consist of the following:

26 (A) ~~Two members~~

27 (1) One member from the area of the North Delta Water Agency
28 as described in Section 9.1 of the North Delta Water Agency Act
29 (Chapter 283 of the Statutes of 1973), ~~provided at least one member~~
30 ~~is also a member of the Delta Citizens Municipal Advisory Council.~~

31 (B)

32 (2) One member from ~~an area including~~ the west ~~delta Delta~~
33 consisting of the area of Contra Costa County within the ~~delta~~
34 ~~Delta and within the Central Delta Water Agency as described in~~
35 ~~Section 9.1 of the Central Delta Water Agency Act (Chapter 1133~~
36 ~~of the Statutes of 1973).~~

37 (C) ~~One member from the area of the Central Delta Water~~
38 ~~Agency as described in Section 9.1 of the Central Delta Water~~
39 ~~Agency Act (Chapter 1133 of the Statutes of 1973).~~

40 (D)

1 (3) One member from the area of the South Delta Water Agency
2 as described in Section 9.1 of the South Delta Water Agency Act
3 (Chapter 1089 of the Statutes of 1973).

4 ~~(2) Each reclamation district may nominate one director to be~~
5 ~~a member. The member from an area shall be selected from among~~
6 ~~the nominees by a majority vote of the reclamation districts in that~~
7 ~~area. The member may select a designee for this purpose. For~~
8 ~~purposes of this section, each reclamation district shall have one~~
9 ~~vote. The north delta area shall conduct separate votes to select~~
10 ~~each of its two members.~~

11 ~~(d) The Director of Parks and Recreation, or the director's sole~~
12 ~~designee.~~

13 ~~(e) The Director of Fish and Game, or the director's sole~~
14 ~~designee.~~

15 ~~(f)~~

16 ~~(d) The Secretary of Food and Agriculture, or the secretary's~~
17 ~~sole designee.~~

18 ~~(g)~~

19 ~~(e) The executive officer of the State Lands Commission, or the~~
20 ~~executive officer's sole designee.~~

21 ~~(h) The Director of Boating and Waterways, or the director's~~
22 ~~sole designee.~~

23 ~~(i) The Director of Water Resources, or the director's sole~~
24 ~~designee.~~

25 ~~(j) The public member of the California Bay-Delta Authority~~
26 ~~who represents the delta region or his or her designee.~~

27 ~~(k) (1) The Governor shall appoint three members and three~~
28 ~~alternates from the general public who are delta residents or delta~~
29 ~~landowners, as follows:~~

30 ~~(A) One member and one alternate shall represent the interests~~
31 ~~of production agriculture with a background in promoting the~~
32 ~~agricultural viability of delta farming.~~

33 ~~(B) One member and one alternate shall represent the interests~~
34 ~~of conservation of wildlife and habitat resources of the delta region~~
35 ~~and ecosystem.~~

36 ~~(C) One member and one alternate shall represent the interests~~
37 ~~of outdoor recreational opportunities, including, but not limited~~
38 ~~to, hunting and fishing.~~

39 ~~(2) An alternate may serve in the absence of a member.~~

1 (f) *The Secretary of the Natural Resources Agency, or his or*
2 *her sole designee.*

3 (g) *The Secretary of Business, Transportation and Housing, or*
4 *his or her sole designee.*

5 SEC. 12. Section 29735.1 of the Public Resources Code is
6 amended to read:

7 29735.1. (a) A member of the commission described in
8 subdivision (a), ~~(b), (c), or (j)~~ of Section 29735 may, subject to
9 the confirmation of his or her appointing power, appoint an
10 alternate to represent him or her at a commission meeting. An
11 alternate may serve prior to confirmation for a period not to exceed
12 90 days from the date of appointment, unless and until confirmation
13 is denied.

14 (b) The alternate shall serve at the pleasure of the member who
15 appoints him or her and shall have all of the powers and duties of
16 a member of the commission, except that the alternate shall only
17 participate and vote in a meeting in the absence of the member
18 who appoints him or her. All provisions of law relating to conflicts
19 of interest that are applicable to a member shall apply to an
20 alternate. ~~Whenever~~ *If* a member has, or is known to have, a
21 conflict of interest on any matter, the member's alternate is
22 ineligible to vote on that matter.

23 SEC. 13. Section 29736 of the Public Resources Code is
24 repealed.

25 ~~29736. The term of office of the members of the commission~~
26 ~~shall be for four years, and a member may serve for one or more~~
27 ~~consecutive terms.~~

28 SEC. 14. Section 29736 is added to the Public Resources Code,
29 to read:

30 29736. The appointed members of the commission shall serve
31 at the pleasure of their appointing entities.

32 SEC. 15. Section 29738 of the Public Resources Code is
33 amended to read:

34 29738. ~~The position office of a~~ *an appointed* member of the
35 ~~commission shall be considered~~ *is* vacated upon the loss of any
36 qualification required for appointment, and in that event the
37 appointing authority shall appoint a successor within 30 days of
38 the occurrence of the vacancy. ~~Upon the occurrence of the first~~
39 ~~vacancy among any of the members listed in subdivision (d), (e),~~

1 (f), (g), (h), or (i) of Section 29735, the Director of Conservation
2 or the director's designee shall serve as the successor member.

3 SEC. 16. Section 29739 of the Public Resources Code is
4 repealed.

5 29739. ~~The commission shall elect from its own members a~~
6 ~~chairperson and vice chairperson whose terms of office shall be~~
7 ~~two years, and who may be reelected. If a vacancy occurs in either~~
8 ~~office, the commission shall fill the vacancy for the unexpired~~
9 ~~term.~~

10 SEC. 17. Section 29739 is added to the Public Resources Code,
11 to read:

12 29739. (a) The commission, during the first meeting of the
13 commission after January 1, 2010, shall elect from among the
14 members identified in subdivision (a) of Section 29735 a
15 chairperson who shall serve for one year.

16 (b) Subsequent chairpersons shall serve for two years and shall
17 be elected from among the members identified in subdivision (a)
18 of Section 29735.

19 (c) The chairperson shall serve as a voting member of the Delta
20 Stewardship Council.

21 SEC. 18. Section 29741 of the Public Resources Code is
22 amended to read:

23 29741. The time and place of the first meeting of the
24 commission, *on and after January 1, 2010*, shall be prescribed by
25 the Governor, but in no event shall it be scheduled for a date later
26 than January 31, ~~1993~~ 2010. All meetings after the first meeting
27 shall be held in a city within the ~~delta~~ Delta.

28 SEC. 19. Section 29751 of the Public Resources Code is
29 amended to read:

30 29751. A majority of the voting members of the commission
31 shall constitute a quorum for the transaction of the business of the
32 commission. A majority vote of the voting ~~members present~~
33 *membership* shall be required to take action with respect to any
34 matter unless otherwise specified in this division. The vote of each
35 member shall be individually recorded.

36 SEC. 20. Section 29752 of the Public Resources Code is
37 amended to read:

38 29752. The commission shall adopt its own rules, regulations,
39 and procedures necessary for its organization and operation, *and*
40 *shall conduct its meetings in compliance with the Bagley-Keene*

1 *Open Meeting Act (Article 9 (commencing with Section 11120) of*
2 *Chapter 1 of Part 1 of Division 3 of Title 2 of the Government*
3 *Code).*

4 SEC. 21. Section 29753 of the Public Resources Code is
5 repealed.

6 ~~29753. The commission shall appoint agricultural,~~
7 ~~environmental, and recreational advisory committees for the~~
8 ~~purpose of providing the commission with timely comments,~~
9 ~~advice, and information. The commission may appoint committees~~
10 ~~from its membership or may appoint additional advisory~~
11 ~~committees from members of other interested public agencies and~~
12 ~~private groups. The commission shall seek advice and~~
13 ~~recommendations from advisory committees appointed by local~~
14 ~~government which are involved in subject matters affecting the~~
15 ~~delta.~~

16 SEC. 22. Section 29753 is added to the Public Resources Code,
17 to read:

18 29753. (a) The commission shall appoint at least one advisory
19 committee to provide recommendations regarding the diverse
20 interests within the Delta. At a minimum, the advisory committees
21 shall include representatives of state agencies and other
22 stakeholders with interests in the Delta's ecosystem, water supply,
23 and socioeconomic sustainability, including, but not limited to, its
24 recreational, agricultural, flood control, environmental, and water
25 resources, and state, local, and utility infrastructure. The
26 commission shall encourage participation of various federal
27 agencies, including the United States Bureau of Reclamation, the
28 United States Fish and Wildlife Service, the United States Army
29 Corps of Engineers, and others as appropriate.

30 (b) The commission may appoint committees from its
31 membership or may appoint additional advisory committees from
32 members of other interested public agencies and private groups.

33 (c) The commission shall seek advice and recommendations
34 from advisory committees appointed by local government that are
35 involved in subject matters affecting the Delta.

36 SEC. 23. Section 29754 of the Public Resources Code is
37 amended to read:

38 29754. The commission shall establish and maintain an office
39 within the ~~delta~~ *Delta or the City of Rio Vista*, and for this purpose
40 the commission may rent or own property and equipment. Any

1 rule, regulation, procedure, plan, or other record of the commission
2 which is of such a nature as to constitute a public record under
3 state law shall be available for inspection and copying ~~during~~
4 ~~regular office hours pursuant to the California Public Records Act~~
5 *(Chapter 3.5 (commencing with Section 6250) of Division 7 of*
6 *Title 1 of the Government Code).*

7 SEC. 24. Section 29756.5 of the Public Resources Code is
8 amended to read:

9 29756.5. The commission may act as the facilitating agency
10 for the implementation of any joint habitat restoration or
11 enhancement programs located within the primary zone of the
12 ~~delta~~ *Delta, including, but not limited to, a national heritage area*
13 *designation in the Delta.*

14 SEC. 25. Section 29759 is added to the Public Resources Code,
15 to read:

16 29759. (a) Not later than July 1, 2011, the commission shall
17 prepare and adopt, by a majority vote of the membership of the
18 commission, an economic sustainability plan. The economic
19 sustainability plan shall include information and recommendations
20 that inform the Delta Stewardship Council's policies regarding the
21 socioeconomic sustainability of the Delta region.

22 (b) The economic sustainability plan shall include, but not be
23 limited to, all of the following:

24 (1) Public safety recommendations, such as flood protection
25 recommendations.

26 (2) The economic goals, policies, and objectives in local general
27 plans and other local economic efforts, including recommendations
28 on continued socioeconomic sustainability of agriculture and its
29 infrastructure and legacy communities in the Delta.

30 (3) Comments and recommendations to the Department of Water
31 Resources concerning its periodic update of the flood management
32 plan for the Delta.

33 (4) Identification of ways to encourage recreational investment
34 along the key river corridors, as appropriate.

35 SEC. 26. Section 29761 of the Public Resources Code is
36 repealed.

37 ~~29761. The Director of the Office of Planning and Research~~
38 ~~shall submit comments and recommendations on the resource~~
39 ~~management plan for the commission's consideration, prior to the~~
40 ~~plan's adoption.~~

SEC. 27. Section 29761 is added to the Public Resources Code, to read:

29761. The commission shall adopt, by a majority vote, the economic sustainability plan and each plan update after at least three public hearings, with at least one hearing held in a community in the north Delta, one hearing in the south Delta, and one hearing in the west Delta.

SEC. 28. Section 29761.5 of the Public Resources Code is repealed.

~~29761.5. Not later than January 7, 1995, the commission shall transmit copies of the resource management plan to the Governor. Copies of the resource management plan shall be made available, upon request, to Members of the Legislature.~~

SEC. 29. Section 29761.5 is added to the Public Resources Code, to read:

29761.5. (a) The commission shall review, and, as determined to be necessary, amend the economic sustainability plan every five years on or before December 31 in years ending in six or one.

(b) The commission shall transmit copies of the economic sustainability plan and any subsequent amendments to the Governor, Legislature, each local government as defined in Section 29725, and Delta Stewardship Council within 60 days of adoption or amendment. Within 180 days of the commission's adoption or amendment of the economic sustainability plan, the Delta Stewardship Council shall review the economic sustainability plan for consistency with the Delta Plan.

SEC. 30. Section 29762 of the Public Resources Code is repealed.

~~29762. The commission shall adopt, by a majority vote of the membership of the commission, the resource management plan after at least three public hearings, with at least one hearing held in a city in the north delta, the south delta, and the west delta.~~

SEC. 31. Section 29763 of the Public Resources Code is amended to read:

29763. Within 180 days from the date of the adoption of the ~~resource resources~~ management plan or any amendments, changes, or updates, to the ~~resource resources~~ management plan by the commission, ~~all each local governments government~~ shall submit to the commission proposed amendments ~~that will cause their general plans to be to its general plan that are intended to make~~

1 *the general plan* consistent with the ~~criteria in Section 29763.5~~
2 *resources management plan* with respect to land located within
3 the primary zone.

4 SEC. 32. Section 29764 of the Public Resources Code is
5 repealed.

6 ~~29764. This division does not confer any permitting authority~~
7 ~~upon the commission or require any local government to conform~~
8 ~~their general plan, or land use entitlement decisions, to the resource~~
9 ~~management plan, except with regard to lands within the primary~~
10 ~~zone. The resource management plan does not preempt local~~
11 ~~government general plans for lands within the secondary zone.~~

12 SEC. 33. Section 29764 is added to the Public Resources Code,
13 to read:

14 29764. Land use authority granted to the commission by this
15 division is limited to the primary zone, and shall not preempt local
16 government general plans for lands within the secondary zone.

17 SEC. 34. Section 29771 of the Public Resources Code is
18 amended to read:

19 29771. After a hearing on an appealed action *pursuant to*
20 *Section 29770*, the commission shall either deny the appeal or
21 remand the matter to the local government or local agency for
22 reconsideration, after making specific findings. Upon remand, the
23 local government or local agency shall modify the appealed action
24 and resubmit the matter for review to the commission. A proposed
25 action appealed pursuant to this section shall not be effective until
26 the commission has adopted written findings, based on substantial
27 evidence in the record, that the action is consistent with the
28 ~~resource- resources~~ management plan, the approved portions of
29 local government general plans that implement the ~~resource~~
30 *resources* management plan, and this division.

31 SEC. 35. Section 29773 is added to the Public Resources Code,
32 to read:

33 29773. (a) The commission may review and provide comments
34 and recommendations to the Delta Stewardship Council on any
35 significant project or proposed project within the scope of the Delta
36 Plan, including, but not limited to, actions by state and federal
37 agencies, that may affect the unique cultural, recreational, and
38 agricultural values within the primary and secondary zones. Review
39 and comment authority granted to the commission shall include,
40 but is not limited to, all of the following:

1 (1) Identification of impacts to the cultural, recreational, and
2 agricultural values of the Delta.

3 (2) Recommendations for actions that may avoid, reduce, or
4 mitigate impacts to the cultural, recreational, and agricultural values
5 of the Delta.

6 (3) Review of consistency of the project or proposed project
7 with the resources management plan and the Delta Plan.

8 (4) Identification and recommendation of methods to address
9 Delta community concerns regarding large-scale habitat plan
10 development and implementation.

11 (b) The council shall take into consideration the
12 recommendations of the commission, including the
13 recommendations included in the economic sustainability plan. If
14 the council, in its discretion, determines that a recommendation
15 of the commission is feasible and consistent with the objectives
16 of the Delta Plan and the purposes of this division, the council
17 shall adopt the recommendation.

18 SEC. 36. Section 29773.5 is added to the Public Resources
19 Code, to read:

20 29773.5. On or before July 1, 2010, the commission shall
21 prepare and submit to the Legislature recommendations regarding
22 the potential expansion of or change to the primary zone or the
23 Delta. The commission shall consider recommendations on the
24 status of all of the following areas:

25 (a) Rio Vista.

26 (b) Isleton.

27 (c) Bethel Island.

28 (d) Brannan-Andrus Island.

29 (e) Cosumnes/Mokelumne floodway.

30 (f) The San Joaquin/South Delta lowlands.

31 SEC. 37. Section 29778.5 is added to the Public Resources
32 Code, to read:

33 29778.5. The Delta Investment Fund is hereby created in the
34 State Treasury. Any funds within the Delta Investment Fund shall
35 be available, upon appropriation by the Legislature, to the
36 commission for the implementation of the regional economic
37 sustainability plan, developed pursuant to Section 29759, for the
38 purposes of enhancing Delta communities. The Delta Investment
39 Fund may receive funds from federal, state, local, and private
40 sources.

SEC. 38. Section 29780 of the Public Resources Code is amended to read:

29780. On January 1 of each year, the commission shall submit to the Governor and the Legislature a report describing the progress that has been made in achieving the objectives of this division. The report shall include, but *need* not be limited to, ~~all both~~ of the following information:

~~(a) An evaluation of the effectiveness of the resource management plan in preserving agricultural lands, restoring delta habitat, improving levee protection and water quality, providing increased public access and recreational opportunities, and in undertaking other functions prescribed in this division.~~

(a) An evaluation of the effectiveness of the commission in undertaking its functions prescribed in this division, including, but not limited to, its mandates as follows:

(1) Determining the consistency of local general plans with the Delta Plan.

(2) Outcomes of appealed local land use decisions pursuant to Sections 29770 and 29771.

(3) Outcomes of reviews initiated by the commission.

(4) Facilitating regional economic sustainability.

(5) Supporting other regional activities for the enhancement of Delta communities.

~~(b) An update of the resource management economic sustainability plan, using baseline conditions set forth in the original resource management economic sustainability plan.~~

SEC. 39. Division 22.3 (commencing with Section 32300) is added to the Public Resources Code, to read:

DIVISION 22.3. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY

CHAPTER 1. GENERAL PROVISIONS

32300. This division shall be known, and may be cited, as the Sacramento-San Joaquin Delta Conservancy Act.

32301. The Legislature finds and declares all of the following:

(a) The Sacramento-San Joaquin Delta is a unique natural resource of local, state, and national significance.

1 (b) At 1,300 square miles, the Delta is the largest estuary on the
2 west coast of North and South America.

3 (c) Its rivers and labyrinths of sloughs and channels are home
4 to 750 species of plants and wildlife as well as 55 species of fish,
5 provide habitat for 700 native plant and animal species, and are
6 part of the Pacific Flyway.

7 (d) The Delta contains more than 500,000 acres of agricultural
8 land, with unique soils, and farmers who are creative and utilize
9 innovative agriculture, such as carbon sequestration crops,
10 subsidence reversal crops, wildlife-friendly crops, and crops direct
11 for marketing to the large urban populations nearby.

12 (e) The Delta and Suisun Marsh provide numerous opportunities
13 for recreation, such as boating, kayaking, fishing, hiking, birding,
14 and hunting. Navigable waterways in the Delta are available for
15 public access and currently make up the majority of recreational
16 opportunities. There is a need for land-based recreational access
17 points including parks, picnic areas, and campgrounds.

18 (f) The Delta's history is rich with a distinct natural, agricultural,
19 and cultural heritage. It is home to the community of Locke, the
20 only town in the United States built primarily by early Chinese
21 immigrants. Other legacy communities include Bethel Island,
22 Clarksburg, Courtland, Freeport, Hood, Isleton, Knightsen, Rio
23 Vista, Ryde, and Walnut Grove.

24 (g) The Delta is home to more than 500,000 people and 200,000
25 jobs, and contributes over thirty-five billion dollars
26 (\$35,000,000,000) to the state's economy.

27 (h) In addition, the Delta provides water to more than 25 million
28 Californians and three million acres of agricultural land. It supports
29 a four hundred billion dollar (\$400,000,000,000) economy and is
30 traversed by energy, communications, and transportation facilities
31 vital to the economic health of California.

32 (i) A Sacramento-San Joaquin Delta Conservancy can support
33 efforts that advance both environmental protection and the
34 economic well-being of Delta residents in a complementary
35 manner, including all of the following:

- 36 (1) Protect and enhance habitat and habitat restoration.
37 (2) Protect and preserve Delta agriculture and working
38 landscapes.
39 (3) Provide increased opportunities for tourism and recreation.

(4) Promote Delta legacy communities and economic vitality in the Delta in coordination with the Delta Protection Commission.

(5) Increase the resilience of the Delta to the effects of natural disasters such as floods and earthquakes, in coordination with the Delta Protection Commission.

(6) Protect and improve water quality.

(7) Assist the Delta regional economy through the operation of the conservancy's program.

(8) Identify priority projects and initiatives for which funding is needed.

(9) Protect, conserve, and restore the region's physical, agricultural, cultural, historical, and living resources.

(10) Assist local entities in the implementation of their habitat conservation plans (HCPs) and natural community conservation plans (NCCPs).

(11) Facilitate take protection and safe harbor agreements under the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 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.

(12) Promote environmental education.

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,

1 recreational, scenic, or open-space opportunities, protection of the
2 natural environment, preservation or enhancement of wildlife,
3 preservation of cultural and historical resources, or efforts to
4 provide for the enjoyment of public lands.

5 (g) “Suisun Marsh” means the area defined in Section 29101
6 and protected by Division 19 (commencing with Section 29000).

7
8 CHAPTER 3. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY
9

10 32320. There is in the Natural Resources Agency the
11 Sacramento-San Joaquin Delta Conservancy, which is created as
12 a state agency to work in collaboration and cooperation with local
13 governments and interested parties.

14 32322. (a) The conservancy shall act as a primary state agency
15 to implement ecosystem restoration in the Delta.

16 (b) The conservancy shall support efforts that advance
17 environmental protection and the economic well-being of Delta
18 residents, including all of the following:

19 (1) Protect and enhance habitat and habitat restoration.

20 (2) Protect and preserve Delta agriculture and working
21 landscapes.

22 (3) Provide increased opportunities for tourism and recreation
23 in the Delta.

24 (4) Promote Delta legacy communities and economic vitality
25 in the Delta, in coordination with the Delta Protection Commission.

26 (5) Increase the resilience of the Delta to the effects of natural
27 disasters such as floods and earthquakes, in coordination with the
28 Delta Protection Commission.

29 (6) Protect and improve water quality.

30 (7) Assist the Delta regional economy through the operation of
31 the conservancy’s program.

32 (8) Identify priority projects and initiatives for which funding
33 is needed.

34 (9) Protect, conserve, and restore the region’s physical,
35 agricultural, cultural, historical, and living resources.

36 (10) Assist local entities in the implementation of their habitat
37 conservation plans (HCPs) and natural community conservation
38 plans (NCCPs).

39 (11) Facilitate take protection and safe harbor agreements under
40 the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531

et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code) for adjacent landowners and local public agencies.

(12) Promote environmental education through grant funding.

(c) When implementing subdivision (b), the conservancy shall undertake efforts to enhance public use and enjoyment of lands owned by the public.

CHAPTER 4. GOVERNING BOARD

32330. The board shall consist of 11 voting members and two 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, subject to confirmation by the Senate.

(9) One public member appointed by the Senate Committee on Rules.

1 (10) One public member appointed by the Speaker of the
2 Assembly.

3 (b) The two nonvoting members shall consist of a Member of
4 the Senate, appointed by the Senate Committee on Rules, and a
5 Member of the Assembly, appointed by the Speaker of the
6 Assembly. The members appointed under this subdivision shall
7 meet with the conservancy and participate in its activities to the
8 extent that this participation is not incompatible with their positions
9 as Members of the Legislature. The appointed members shall
10 represent a district that encompasses a portion of the Delta.

11 (c) Ten liaison advisers who shall serve in an advisory,
12 nonvoting capacity shall consist of all of the following:

13 (1) One representative of the United States Fish and Wildlife
14 Service, designated by the United States Secretary of the Interior.

15 (2) One representative of the United States National Marine
16 Fisheries Service, designated by the United States Secretary of the
17 Interior.

18 (3) One representative of the United States Bureau of
19 Reclamation, designated by the United States Secretary of the
20 Interior.

21 (4) One representative of the United States Army Corps of
22 Engineers, designated by the Commanding Officer, United States
23 Army Corps of Engineers, South Pacific Division.

24 (5) A designee of the San Francisco Bay Conservation and
25 Development Commission for coordination purposes.

26 (6) A designee of the State Coastal Conservancy for coordination
27 purposes.

28 (7) A designee of the Suisun Resource Conservation District
29 for coordination purposes.

30 (8) A designee of the Central Valley Flood Protection Board.

31 (9) A designee of the Yolo Basin Foundation.

32 (10) A designee of the Delta Protection Commission.

33 (d) The public members appointed by the Governor shall serve
34 for a term of four years, with a two-term limit.

35 (e) The locally appointed members and alternates shall serve at
36 the pleasure of the appointing board of supervisors.

37 (f) The public members appointed by the Senate Committee on
38 Rules or the Speaker of the Assembly shall serve for a term of four
39 years, with a two-term limit.

1 (g) The Members of the Senate and Assembly shall serve at the
2 pleasure of the appointing body.

3 (h) Alternates may be appointed by the county boards of
4 supervisors.

5 32332. Annually, the voting members of the board shall elect
6 from among the voting members a chairperson and vice
7 chairperson, and other officers as necessary. If the office of the
8 chairperson or vice chairperson becomes vacant, a new chairperson
9 or vice chairperson shall be elected by the voting members of the
10 board to serve for the remainder of the term. The chairperson shall
11 be selected from among the members specified in paragraphs (3)
12 to (7), inclusive, of subdivision (a) of Section 32330.

13 32334. A majority of the voting members shall constitute a
14 quorum for the transaction of the business of the conservancy. The
15 board shall not transact the business of the conservancy if a quorum
16 is not present at the time a vote is taken. A decision of the board
17 requires an affirmative vote of six of the voting membership, and
18 the vote is binding with respect to all matters acted on by the
19 conservancy.

20 32336. The board shall adopt rules and procedures for the
21 conduct of business by the conservancy.

22 32338. The board may establish advisory boards or committees,
23 hold community meetings, and engage in public outreach.

24 32340. The board shall establish and maintain a headquarters
25 office within the Delta. The conservancy may rent or own real and
26 personal property and equipment pursuant to applicable statutes
27 and regulations.

28 32342. The board shall determine the qualifications of, and
29 shall appoint, an executive officer of the conservancy, who shall
30 be exempt from civil service. The board shall employ other staff
31 as necessary to execute the powers and functions provided for in
32 this division.

33 32344. The board may enter into contracts with private entities
34 and public agencies to procure consulting and other services
35 necessary to achieve the purposes of this division.

36 32346. The conservancy's expenses for support and
37 administration may be paid from the conservancy's operating
38 budget and any other funding sources available to the conservancy.

39 32348. The board shall conduct business in accordance with
40 the Bagley-Keene Open Meeting Act (Article 9 (commencing with

1 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of
2 the Government Code).

3 32350. The board shall hold its regular meetings within the
4 Delta or the City of Rio Vista.

5
6 CHAPTER 5. POWERS, DUTIES, AND LIMITATIONS
7

8 32360. (a) Except as specified in Section 32360.5, the
9 jurisdiction and activities of the conservancy are limited to the
10 Delta and Suisun Marsh.

11 (b) (1) The Sacramento-San Joaquin Delta Conservancy Fund
12 is hereby created in the State Treasury. Moneys in the fund shall
13 be available, upon appropriation by the Legislature, only for the
14 purposes of this division.

15 (2) Funds provided for ecosystem restoration and enhancement
16 shall be available for ecosystem restoration projects consistent
17 with the conservancy's strategic plan adopted pursuant to Section
18 32376.

19 (3) Funds may be allocated to a separate program within the
20 conservancy for economic sustainability in the Delta. The economic
21 sustainability plan adopted pursuant to Section 29759 shall be the
22 basis for the program. Funds provided to the conservancy to
23 implement ecosystem restoration projects pursuant to the Bay
24 Delta Conservation Plan shall only be used for ecosystem
25 restoration purposes.

26 32360.5. In furtherance of the conservancy's role in
27 implementing the Delta Plan, the conservancy may take or fund
28 an action outside the Delta and Suisun Marsh if the board makes
29 all of the following findings:

30 (a) The project implements the ecosystem goals of the Delta
31 Plan.

32 (b) The project is consistent with the requirements of any
33 applicable state and federal permits.

34 (c) The conservancy has given notice to and reviewed any
35 comments received from affected local jurisdictions and the Delta
36 Protection Commission.

37 (d) The conservancy has given notice to and reviewed any
38 comments received from any state conservancy where the project
39 is located.

40 (e) The project will provide significant benefits to the Delta.

1 32362. The conservancy may engage in partnerships with
2 nonprofit organizations, local public agencies, and landowners.

3 32363. In implementing this division, the conservancy shall
4 cooperate and consult with the city or county in which a grant is
5 proposed to be expended or an interest in real property is proposed
6 to be acquired, and shall, as necessary or appropriate, coordinate
7 its efforts with other state agencies, in cooperation with the
8 Secretary of the Natural Resources Agency. The conservancy shall,
9 as necessary or appropriate, cooperate and consult with a public
10 water system, levee, flood control, or drainage agency that owns
11 or operates facilities, including lands appurtenant thereto, where
12 a grant is proposed to be expended or an interest in land is proposed
13 to be acquired.

14 32364. (a) The conservancy may require a grantee to enter
15 into an agreement with the conservancy on terms and conditions
16 specified by the conservancy.

17 (b) The conservancy may require a cost-share or local funding
18 requirement for a grant. The conservancy may make that cost-share
19 or local funding requirement contingent upon the total amount of
20 funding available, the fiscal resources of the applicant, or urgency
21 of the project. The conservancy may waive cost-share requirements.

22 (c) The conservancy may fund or award grants for plans and
23 feasibility studies consistent with its strategic plan or the Delta
24 Plan.

25 (d) The conservancy may seek repayment or reimbursement of
26 funds granted on terms and conditions it deems appropriate. The
27 proceeds of repayment shall be deposited in the fund.

28 (e) The conservancy may require any funds that exceed the costs
29 of eligible or approved projects or of acquisition to be returned to
30 the conservancy, to be available for expenditure when appropriated
31 by the Legislature.

32 32364.5. (a) The conservancy may provide grants and loans
33 to state agencies, local public agencies, and nonprofit organizations
34 to further the goals of the conservancy.

35 (b) An entity applying for a grant from the conservancy to
36 acquire an interest in real property shall specify all of the following
37 in the grant application:

38 (1) The intended use of the property.

39 (2) The manner in which the land will be managed.

1 (3) How the cost of ongoing operations, maintenance, and
2 management will be provided, including an analysis of the
3 maintaining entity's financial capacity to support those ongoing
4 costs.

5 (4) Grantees shall demonstrate, where applicable, how they will
6 provide payments in lieu of taxes, assessments, or charges
7 otherwise due to local government.

8 32365. The conservancy may sue and be sued.

9 32366. (a) The conservancy may acquire from willing sellers
10 or transferors interests in real property and improve, lease, or
11 transfer interests in real property, in order to carry out the purposes
12 of this division.

13 (b) The conservancy shall use conservation easements to
14 accomplish ecosystem restoration whenever feasible.

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, gifts, donations, bequests, devises,
24 subventions, grants, rents, royalties, or other assistance and funds
25 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 resources management plan, the Central Valley Flood Protection

1 Plan, the Suisun Marsh Preservation Act of 1977 (Division 19
2 (commencing with Section 29000)), and the Habitat Management,
3 Preservation and Restoration Plan for the 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. 40. Chapter 2.7 (commencing with Section 348) is added
23 to Division 1 of the Water Code, to read:

24
25 CHAPTER 2.7. WATER DIVERSION AND USE REPORTS
26

27 348. (a) The department or the board may adopt emergency
28 regulations providing for the electronic filing of reports of water
29 diversion or use required to be filed with the department or board
30 under this code, including, but not limited to, any report required
31 to be filed under Part 5.1 (commencing with Section 5100) of
32 Division 2 and any report required to be filed by a water right
33 permittee or licensee.

34 (b) Emergency regulations adopted pursuant to this section, or
35 any amendments thereto, shall be adopted by the department or
36 the board in accordance with Chapter 3.5 (commencing with
37 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
38 Code. The adoption of these regulations is an emergency and shall
39 be considered by the Office of Administrative Law as necessary
40 for the immediate preservation of the public peace, health, safety,

1 and general welfare. Notwithstanding Chapter 3.5 (commencing
2 with Section 11340) of Part 1 of Division 3 of Title 2 of the
3 Government Code, any emergency regulations or amendments to
4 those regulations adopted under this section shall remain in effect
5 until revised by the department or the board that adopted the
6 regulations or amendments.

7 SEC. 41. Section 1051.1 is added to the Water Code, to read:

8 1051.1. (a) In conducting any investigation or proceeding
9 specified in Section 275 or 1051, or Article 7 (commencing with
10 Section 13550) of Chapter 7 of Division 7, the board may order
11 any person or entity that diverts or uses water to prepare and submit
12 to the board any technical or monitoring program reports related
13 to that person's or entity's diversion or use of water as the board
14 may specify. The costs incurred by the person or entity in the
15 preparation of those reports shall bear a reasonable relationship to
16 the need for the report and the benefit to be obtained from the
17 report. If the preparation of individual reports would result in a
18 duplication of effort, or if the reports are necessary to evaluate the
19 cumulative effect of several diversions or uses of water, the board
20 may order any person or entity subject to this subdivision to pay
21 a reasonable share of the cost of preparing reports.

22 (b) Any order issued under this section shall be served by
23 personal service or registered mail on the party required to submit
24 technical or monitoring program reports or to pay a share of the
25 costs of preparing reports. Unless the board issues the order after
26 a hearing, the order shall inform the party of the right to request a
27 hearing within 30 days after the party has been served. If the party
28 does not request a hearing within that 30-day period, the order
29 shall take effect as issued. If the party requests a hearing within
30 that 30-day period, the board may adopt a decision and order after
31 conducting a hearing.

32 (c) Upon application of any person or entity or upon its own
33 motion, the board may review and revise any order issued pursuant
34 to this section, in accordance with the procedures set forth in
35 subdivision (b).

36 (d) In conducting any investigation or proceeding specified in
37 Section 275 or 1051, or Article 7 (commencing with Section
38 13550) of Chapter 7 of Division 7, the board may inspect the
39 facilities of any person or entity to ascertain whether the purposes
40 of Section 100 and this division are being met and to ascertain

1 compliance with any permit, license, certification, registration,
2 decision, order, or regulation issued under Section 275, this
3 division, or Article 7 (commencing with Section 13550) of Chapter
4 7 of Division 7. The board shall adopt regulations for procedures
5 pursuant to Article 13 (commencing with Section 11460.10) of
6 Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government
7 Code, and any time extensions necessary to implement those
8 regulations. Except in the event of an emergency affecting the
9 public health or safety, the inspection shall be made with the
10 consent of the owner or possessor of the facilities or, if the consent
11 is withheld, with a warrant duly issued pursuant to the procedure
12 set forth in Title 13 (commencing with Section 1822.50) of Part
13 3 of the Code of Civil Procedure.

14 SEC. 42. Section 1052 of the Water Code is amended to read:

15 1052. (a) The diversion or use of water subject to this division
16 other than as authorized in this division is a trespass.

17 ~~(b) Civil liability may be administratively imposed by the board~~
18 ~~pursuant to Section 1055 for a trespass as defined in this section~~
19 ~~in an amount not to exceed five hundred dollars (\$500) for each~~
20 ~~day in which the trespass occurs.~~

21 (c)

22 (b) The Attorney General, upon request of the board, shall
23 institute in the superior court in and for any county ~~wherein in~~
24 ~~which~~ the diversion or use is threatened, is occurring, or has
25 occurred ~~appropriate~~ an action for the issuance of injunctive relief
26 as may be warranted by way of temporary restraining order,
27 preliminary injunction, or permanent injunction.

28 (d)

29 (c) (1) Any person or entity committing a trespass as defined
30 in this section may be liable ~~for a sum in an amount~~ not to exceed
31 ~~five hundred dollars (\$500) for each day in which the trespass~~
32 ~~occurs. The the greater of either of the following amounts:~~

33 (A) *One thousand dollars (\$1,000) for each day in which the*
34 *trespass occurs for the first enforcement proceeding or five*
35 *thousand dollars (\$5,000) for each day in which the trespass occurs*
36 *for any subsequent enforcement proceeding.*

37 (B) *The highest market value of the water subject to the trespass.*

38 (2) The Attorney General, upon request of the board, shall
39 petition the superior court to impose, assess, and recover any sums
40 pursuant to this subdivision. In determining the appropriate amount,

the court shall take into consideration all relevant circumstances, including, but not limited to, 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, *with respect to the violator, the ability to pay, the effect on the ability to continue in business, the corrective action, if any, taken by the violator, and other matters as justice may require.*

(3) *Civil liability may be imposed by the board pursuant to Section 1055.*

(e)

(d) (1) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

(2) *Any funds recovered pursuant to this section that exceed the amounts that were authorized before the effective date of the amendments made to this section by ____ of the 2009–10 Seventh Extraordinary Session of the Legislature shall be deposited in the Water Rights Protection Subaccount in the Water Rights Fund established pursuant to Section 1550.*

(f)

(e) The remedies prescribed in this section are cumulative and not alternative.

SEC. 43. Section 1055 of the Water Code is amended to read:

1055. (a) The executive director of the board may issue a complaint to any person or entity on which administrative civil liability may be imposed pursuant to Section 1052, ~~Section 1536, Section 1845, Article 4 (commencing with Section 1845) of Chapter 12 of Part 2 of Division 2,~~ or Section 5107. The complaint shall allege the act or failure to act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

(b) The complaint shall be served by personal notice or certified mail, and shall inform the party served that the party may request a hearing not later than 20 days from the date the party was served. The hearing shall be before *the board*, or a member of the board ~~as it may specify in accordance with Section 183.~~

~~(c) After any hearing, the member shall report a proposed decision and order to the board and shall supply a copy to the party served with the complaint, the board's executive director, and any other person requesting a copy. The member of the board acting~~

1 as hearing officer may sit as a member of the board in deciding
2 the matter. The board, after making an independent review of the
3 record and taking any additional evidence as may be necessary
4 that could not reasonably have been offered before the hearing
5 officer, may adopt, with or without revision, the proposed decision
6 and order.

7 (c) The board may adopt an order setting administrative civil
8 liability, or determining that no liability will be imposed, after any
9 necessary hearing.

10 (d) Orders setting administrative civil liability shall become
11 effective and final upon issuance thereof and payment shall be
12 made.

13 SEC. 44. Section 1055.2 of the Water Code is amended to read:

14 1055.2. No person or entity shall be subject to both civil
15 liability imposed under Section 1055 and civil liability imposed
16 by the superior court under subdivision (d) of Section 1052, Section
17 1536, or Section 1845, or 1846 for the same act or failure to act.

18 SEC. 45. Section 1055.3 of the Water Code is amended to read:

19 1055.3. In determining the amount of civil liability, the board
20 shall take into consideration all relevant circumstances, including,
21 but not limited to, the extent of harm caused by the violation, the
22 nature and persistence of the violation, the length of time over
23 which the violation occurs, and *with respect to the violator, the*
24 *ability to pay, the effect on the ability to continue in business,* the
25 corrective action, if any, taken by the violator, *and other matters*
26 *as justice may require.*

27 SEC. 46. Section 1120 of the Water Code is amended to read:

28 1120. This chapter applies to any decision or order issued under
29 this part or Section 275, Part 2 (commencing with Section 1200),
30 Part 2 (commencing with Section 10500) of Division 6, Article 7
31 (commencing with Section 13550) of Chapter 7 of Division 7,
32 Section 85230, or the public trust doctrine.

33 SEC. 47. Section 1240.5 is added to the Water Code, to read:

34 1240.5. In any proceeding before the board in which it is
35 alleged that a right to appropriate water has ceased or is subject to
36 forfeiture or revocation for nonuse, there shall be a rebuttable
37 presumption that no use occurred unless that use is included in a
38 statement submitted pursuant to any reporting or monitoring
39 requirement established under any permit, license, certificate,
40 registration, decision or order, or regulation issued by the board

pursuant to this division, Section 275, Article 7 (commencing with Section 13550) of Division 7, or the public trust doctrine under this part, and the statement is submitted within six months after it is required to be filed with the board. This section does not apply to any diversion or use that occurred before January 1, 2009.

SEC. 48. Section 1525 of the Water Code is amended to read:

1525. (a) Each person or entity who holds a permit or license to appropriate water, and each lessor of water leased under Chapter 1.5 (commencing with Section 1020) of Part 1, shall pay an annual fee according to a fee schedule established by the board.

(b) Each person or entity who files any of the following shall pay a fee according to a fee schedule established by the board:

(1) An application for a permit to appropriate water.

(2) A registration of appropriation for a small domestic use or livestock stockpond use.

(3) A petition for an extension of time within which to begin construction, to complete construction, or to apply the water to full beneficial use under a permit.

(4) A petition to change the point of diversion, place of use, or purpose of use, under a *registration for small domestic use or livestock stockpond use, or under a permit or license*.

(5) A petition to change the conditions of a permit or license, requested by the permittee or licensee, that is not otherwise subject to paragraph (3) or (4).

(6) *A petition under Section 1707 or 1740 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.*

~~(6)~~

(7) A petition to change the point of discharge, place of use, or purpose of use, of treated wastewater, requested pursuant to Section 1211.

~~(7)~~

(8) An application for approval of a water lease agreement.

~~(8)~~

(9) A request for release from priority pursuant to Section 10504.

~~(9)~~

(10) An application for an assignment of a state-filed application pursuant to Section 10504.

(11) *A statement of water diversion and use pursuant to Part 5.1 (commencing with Section 5100).*

(c) The board shall set the fee schedule authorized by this section so that the total amount of fees collected pursuant to this section equals that amount necessary to recover costs incurred in connection with the issuance, administration, review, monitoring, and enforcement of permits, licenses, certificates, and registrations to appropriate water, water leases, *statements of diversion and use*, and orders approving changes in point of discharge, place of use, or purpose of use of treated wastewater. The board may include, as recoverable costs, but is not limited to including, the costs incurred in reviewing applications, registrations, *statements of diversion and use*, petitions and requests, prescribing terms of permits, licenses, registrations, and change orders, enforcing and evaluating compliance with permits, licenses, certificates, registrations, change orders, and water leases, inspection, monitoring, planning, modeling, reviewing documents prepared for the purpose of regulating the diversion and use of water, applying and enforcing *the public trust doctrine*, Section 275, the prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division, *the requirements under Part 5.1 (commencing with Section 5100) for filing statements of diversion and use*, and the administrative costs incurred in connection with carrying out these actions.

(d) (1) The board shall adopt the schedule of fees authorized under this section as emergency regulations in accordance with Section 1530.

(2) For filings subject to subdivision (b), the schedule may provide for a single filing fee or for an initial filing fee followed by an annual fee, as appropriate to the type of filing involved, and may include supplemental fees for filings that have already been made but have not yet been acted upon by the board at the time the schedule of fees takes effect.

(3) The board shall set the amount of total revenue collected each year through the fees authorized by this section at an amount equal to the revenue levels set forth in the annual Budget Act for this activity. The board shall review and revise the fees each fiscal year as necessary to conform with the revenue levels set forth in the annual Budget Act. If the board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the annual Budget Act, the board

1 may further adjust the annual fees to compensate for the over or
2 under collection of revenue.

3 (e) Annual fees imposed pursuant to this section for the 2003–04
4 fiscal year shall be assessed for the entire 2003–04 fiscal year.

5 (f) *Fees imposed on holders of riparian water rights or rights*
6 *to water appropriated prior to December 19, 1914, pursuant to*
7 *this chapter shall bear a fair or reasonable relationship to the*
8 *payor’s burden on, or benefits from, the board’s water rights*
9 *program funded by those fees.*

10 SEC. 49. Section 1535 of the Water Code is amended to read:

11 1535. (a) Any fee subject to this chapter that is required in
12 connection with the filing of an application, registration, request,
13 *statement*, or proof of claim, other than an annual fee required after
14 the period covered by the initial filing fee, shall be paid to the
15 board.

16 (b) If a fee established under subdivision (b) of Section 1525,
17 Section 1528, or Section 13160.1 is not paid when due, the board
18 may cancel the application, registration, petition, request, *statement*,
19 or claim, or may refer the matter to the State Board of Equalization
20 for collection of the unpaid fee.

21 SEC. 50. Section 1538 of the Water Code is amended to read:

22 1538. (a) In any proceeding pursuant to Section 1052 in which
23 it is determined that there has been a violation of the prohibition
24 against the unauthorized diversion or use of water subject to this
25 division, the board or court, as the case may be, may impose an
26 additional liability in the amount of *150 percent of any annual fees*
27 *that would have been required under this division if the diversion*
28 *or use had been authorized by a permit or license to appropriate*
29 *water.*

30 (b) *In any proceeding pursuant to Section 5107 in which the*
31 *board imposes liability for a failure to file a statement of diversion*
32 *and use or for a material misstatement in a statement of diversion*
33 *and use, the board may impose an additional liability in the amount*
34 *of 150 percent of any fees that have not been paid but would have*
35 *been required under this division if the statement of diversion and*
36 *use had been filed and did not make any material misstatement.*

37 (c) *The additional liability imposed under this section may*
38 *include interest, at the rate provided under Section 685.010 of the*
39 *Code of Civil Procedure, from the dates the annual fees would*
40 *have been assessed.*

1 SEC. 51. Section 1550 of the Water Code is amended to read:
2 1550. (a) There is in the State Treasury a Water Rights Fund,
3 which is hereby established.

4 (b) *There is hereby established the Water Rights Protection*
5 *Subaccount in the Water Rights Fund. It is the intent of the*
6 *Legislature that the moneys in the Water Rights Protection*
7 *Subaccount be available for expenditure, upon appropriation by*
8 *the Legislature, to reduce fees on water right holders, for water*
9 *restoration projects, conservancies, and for General Fund*
10 *purposes.*

11 SEC. 52. Section 1551 of the Water Code is amended to read:
12 1551. All of the following shall be deposited in the Water
13 Rights Fund:

14 (a) All fees, expenses, and penalties collected by the board or
15 the State Board of Equalization under this chapter and Part 3
16 (commencing with Section 2000).

17 (b) All funds collected under Section 1052, ~~1845 or Article 4~~
18 ~~(commencing with Section 1845) of Chapter 12, and Section 5107.~~

19 (c) All fees collected under Section 13160.1 in connection with
20 certificates for activities involving hydroelectric power projects
21 subject to licensing by the Federal Energy Regulatory Commission.

22 SEC. 53. Section 1825 of the Water Code is amended to read:
23 1825. It is the intent of the Legislature that the state should
24 take vigorous action to enforce the terms and conditions of permits,
25 licenses, certifications, and registrations to appropriate water, to
26 enforce state board orders and decisions, ~~and to prevent the~~
27 ~~unlawful diversion of water, and to prevent the waste,~~
28 ~~unreasonable use, unreasonable method of use, or unreasonable~~
29 ~~method of diversion, of water, and to enforce reporting and~~
30 ~~monitoring requirements.~~

31 SEC. 54. Section 1826 is added to the Water Code, to read:

32 1826. The board shall establish a schedule of penalties that
33 applies to small farms for de minimis water right violations under
34 this division.

35 SEC. 55. Section 1845 of the Water Code is amended to read:

36 1845. (a) Upon the failure of any person to comply with a
37 cease and desist order issued by the board pursuant to this chapter,
38 the Attorney General, upon the request of the board, shall petition
39 the superior court for the issuance of prohibitory or mandatory

injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.

(b) (1) Any person or entity who violates a cease and desist order issued pursuant to this chapter may be liable for a sum in an amount not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs; the greater of either of the following amounts:

(A) One thousand dollars (\$1,000) for each day in which the violation occurs for the first enforcement proceeding or five thousand (\$5,000) for each day in which the violation occurs for any subsequent enforcement proceeding.

(B) The highest market value of the water.

(2) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.

(3) Civil liability may be imposed administratively by the board pursuant to Section 1055.

(c) In determining the appropriate amount, the court, or the board, as the case may be, shall take into consideration all relevant circumstances, including, but not limited to, 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, with respect to the violator, the ability to pay, the effect on the ability to continue in business, the corrective action, if any, taken by the violator, and other matters as justice may require.

(d) (1) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

(2) Any funds recovered pursuant to this section that exceed the amounts that were authorized before the effective date of the amendments made to this section by ____ of the 2009–10 Seventh Extraordinary Session of the Legislature shall be deposited in the Water Rights Protection Subaccount in the Water Rights Funds established pursuant to Section 1550.

SEC. 56. Section 1846 is added to the Water Code, to read:

1846. (a) Any person or entity subject to a monitoring or reporting requirement specified in subdivision (f) who violates that reporting or monitoring requirement, makes a material misstatement in any record or report submitted under that reporting or monitoring requirement, or tampers with or renders inaccurate

1 any monitoring device required under that reporting or monitoring
2 requirement shall be liable for a sum not to exceed five hundred
3 dollars (\$500) for each day in which the violation occurs.

4 (b) Civil liability may be imposed by the superior court. The
5 Attorney General, upon the request of the board, shall petition the
6 superior court to impose, assess, and recover those sums.

7 (c) Civil liability may be imposed administratively by the board
8 pursuant to Section 1055.

9 (d) In determining the appropriate amount, the court, or the
10 board, as the case may be, shall take into consideration all relevant
11 circumstances, including, but not limited to, the extent of harm
12 caused by the violation, the nature and persistence of the violation,
13 the length of time over which the violation occurs, and, with respect
14 to the violator, the ability to pay, the effect on the ability to
15 continue in business, the corrective action, if any, taken by the
16 violator, and other matters as justice may require.

17 (e) All funds recovered pursuant to this section shall be
18 deposited in the Water Rights Protection Subaccount in the Water
19 Rights Fund established pursuant to Section 1550.

20 (f) (1) This section applies to any reporting or monitoring
21 requirement established under any permit, license, certificate,
22 registration, decision or order, or regulation issued by the board
23 pursuant to this division, Section 275, Article 7 (commencing with
24 Section 13550) of Division 7, or the public trust doctrine.

25 (2) This section also applies to any reporting or monitoring
26 requirement established by the department under Section 275, if
27 the department requests enforcement pursuant to this section.

28 (3) This section does not provide a basis for imposing liability
29 on a watermaster who is subject to reporting or monitoring
30 requirements but does not divert or use the water subject to those
31 requirements.

32 SEC. 57. Section 1847 is added to the Water Code, to read:

33 1847. (a) Any person or entity who violates any term or
34 condition of a permit, license, certificate, or registration issued
35 under this division or any order or regulation adopted by the board
36 under Section 275 may be liable in an amount not to exceed five
37 hundred dollars (\$500) for each day in which the violation occurs.

38 (b) Civil liability may be imposed by the superior court. The
39 Attorney General, upon the request of the board, shall petition the
40 superior court to impose, assess, and recover those sums.

1 (c) Civil liability may be imposed administratively by the board
2 pursuant to Section 1055.

3 (d) In determining the appropriate amount, the court, or the
4 board, as the case may be, shall take into consideration all relevant
5 circumstances, including, but not limited to, the extent of harm
6 caused by the violation, the nature and persistence of the violation,
7 the length of time over which the violation occurs, and, with respect
8 to the violator, the ability to pay, the effect on the ability to
9 continue in business, the corrective action, if any, taken by the
10 violator, and other matters as justice may require.

11 (e) No liability shall be recoverable under this section for any
12 violation for which liability is recovered under Section 1052 or
13 1846.

14 (f) All funds recovered pursuant to this section shall be deposited
15 in the Water Rights Protection Subaccount in the Water Rights
16 Fund established pursuant to Section 1550.

17 SEC. 58. Section 2525 of the Water Code is amended to read:

18 2525. Upon petition signed by one or more claimants to water
19 of any stream system, requesting the determination of the rights
20 of the various claimants to the water of that stream system, the
21 board shall, if, upon investigation, it finds the facts and conditions
22 are such that the public interest and necessity will be served by a
23 determination of the water rights involved, enter an order granting
24 the petition and make proper arrangements to proceed with the
25 determination. *The board may initiate a determination of rights*
26 *under its own motion if after a hearing it finds, based on substantial*
27 *evidence, that the public interest and necessity will be served by*
28 *a determination of the rights involved.*

29 SEC. 59. Section 2526 of the Water Code is amended to read:

30 2526. As soon as practicable after granting the petition *or*
31 *motion* the board shall prepare and issue a notice setting forth the
32 following:

33 (a) The facts of the entry of the order and of the pendency of
34 ~~the proceedings;~~ *proceedings.*

35 (b) That all claimants to rights to the use of water of the stream
36 system are required to inform the board within 60 days from the
37 date of the notice, or such further time as the board may allow, of
38 their intention to file proof of ~~claim;~~ *claim.*

39 (c) The date prior to which all claimants to rights to the water
40 of the stream system shall notify the board in writing of their

1 intention to file proof of claim and the address to which all
2 subsequent notices to the claimant relating to the proceedings may
3 be ~~sent~~; *sent*.

4 (d) A statement that all claimants will be required to make proof
5 of their claims at a time to be fixed by the board after the
6 conclusion of its investigation.

7 SEC. 60. Section 2550 of the Water Code is amended to read:

8 2550. As soon as practicable after granting the petition *or*
9 *motion*, the board shall begin an investigation of the stream system,
10 of the diversion of water, of all beneficial uses being made of the
11 water, and of the water supply available for those uses, and shall
12 gather such other data and information as may be essential to the
13 proper determination of the water rights in the stream system.

14 SEC. 61. Section 2763.5 of the Water Code is amended to read:

15 2763.5. (a) No exception to the order of determination shall
16 be considered, except in the court's discretion for good cause
17 shown, unless the matter of the exception was presented to the
18 board in the form of an objection. Good cause includes, but is not
19 limited to, the existence of newly discovered relevant evidence
20 which, in the exercise of reasonable diligence, could not have been
21 presented to the board during the board's proceedings.

22 (b) This section does not apply to persons to whom the board
23 did not mail either (1) written notice of the board meeting at which
24 the petition *or motion* pursuant to Section 2525 is to be considered
25 as an item of business, or (2) written notice of the pendency of the
26 proceedings pursuant to Section 2526.

27 SEC. 62. Section 5100 of the Water Code is amended to read:

28 5100. As used in this part:

29 (a) "Best available technologies" means technologies at the
30 highest technically practical level, using flow totaling devices, and
31 if necessary, data loggers and telemetry.

32 (b) "Best professional practices" means practices attaining and
33 maintaining the accuracy of measurement and reporting devices
34 and methods.

35 (c) "Diversion" means taking water by gravity or pumping from
36 a surface stream or subterranean stream flowing through a known
37 and definite channel, or other body of surface water, into a canal,
38 pipeline, or other conduit, and includes impoundment of water in
39 a reservoir.

1 (d) "Person" means all persons whether natural or artificial,
2 including the United States of America, State of California, and
3 all political subdivisions, districts, municipalities, and public
4 agencies.

5 (e) ~~"Tidal zone" means those portions of the Sacramento-San~~
6 ~~Joaquin Delta as described in Section 12220 that are ordinarily~~
7 ~~subject to tidal action.~~

8 SEC. 63. Section 5101 of the Water Code is amended to read:

9 5101. Each person who, after December 31, 1965, diverts water
10 shall file with the board, prior to July 1 of the succeeding year, a
11 statement of his or her diversion and use; ~~provided, however, that~~
12 ~~no statement need, except that a statement is not required to be~~
13 filed if the diversion is any of the following:

14 (a) From a spring ~~which that~~ does not flow off the property on
15 which it is located ~~and from which the person's aggregate~~
16 ~~diversions do not exceed 25 acre-feet in any year.~~

17 (b) Covered by ~~an application, a registration for small domestic~~
18 ~~or livestock stockpond uses, or permit or license to appropriate~~
19 water on file with the board.

20 (c) Included in a notice filed pursuant to Part 5 (commencing
21 with Section 4999) ~~of this division.~~

22 (d) Regulated by a watermaster appointed by the department
23 ~~and included in annual reports filed with a court or the board by~~
24 ~~the watermaster, which reports identify the persons who have~~
25 ~~diverted water and describe the general purposes and the place,~~
26 ~~the use, and the quantity of water that has been diverted from each~~
27 ~~source.~~

28 (e) ~~Reported by the department in its hydrologic data bulletins.~~

29 (f) ~~Included in the consumptive use data for the delta lowlands~~
30 ~~published by the department in its hydrologic data bulletins.~~

31 (g)

32 (e) Included in annual reports filed with a court or the board by
33 a watermaster appointed by a court or pursuant to statute to
34 administer a final judgment determining rights to water, which
35 reports identify the persons who have diverted water and give the
36 general place of use and the quantity of water ~~which that~~ has been
37 diverted from each source.

38 (h)

1 (f) For use in compliance with ~~the provisions of~~ Article 2.5
2 (commencing with Section 1226) *or Article 2.7 (commencing with*
3 *Section 1228) of Chapter 1 of Part 2 of this division.*

4 (g) *A diversion that occurs before January 1, 2009, if any of*
5 *the following applies:*

6 (1) *The diversion is from a spring that does not flow off the*
7 *property on which it is located, and the person's aggregate*
8 *diversions exceed 25 acre-feet in any year.*

9 (2) *The diversion is covered by an application to appropriate*
10 *water on file with the board.*

11 (3) *The diversion is reported by the department in its hydrologic*
12 *data bulletins.*

13 (4) *The diversion is included in the consumptive use data for*
14 *the Delta lowlands published by the department in its hydrologic*
15 *data bulletins.*

16 SEC. 64. Section 5103 of the Water Code is amended to read:
17 5103. Each statement shall be prepared on a form provided by
18 the board. The statement shall include all of the following
19 information:

20 (a) The name and address of the person who diverted water and
21 of the person filing the statement.

22 (b) The name of the stream or other source from which water
23 was diverted, and the name of the next major stream or other body
24 of water to which the source is tributary.

25 (c) ~~The place of diversion. If a public land survey has been~~
26 ~~made, location of~~ *The location of the diversion works shall be*
27 ~~described~~ *depicted on a specific United States Geological Survey*
28 *topographic map, or shall be identified using the California*
29 *Coordinate System, or latitude and longitude measurements. If*
30 *assigned, the public land description to the nearest 40-acre*
31 *subdivision. If not, it shall be described by reference to nearest*
32 ~~local landmarks or other recorded surveys and the assessor's parcel~~
33 *number shall also be provided.*

34 (d) The capacity of the diversion works and of the storage
35 reservoir, if any, and the months in which water was used during
36 the preceding calendar year.

37 (e) (1) On and after January 1, 2012, monthly records of water
38 diversions. The measurements of the diversion shall be made using
39 best available technologies and best professional practices. Nothing
40 in this paragraph shall be construed to require the implementation

1 of technologies or practices ~~that are by a person who provides to~~
2 ~~the board documentation demonstrating that the implementation~~
3 ~~of those practices is not locally cost effective.~~

4 ~~(2) Paragraph (1) does not apply to a surface water diversion~~
5 ~~with a combined diversion capacity from a natural channel that is~~
6 ~~less than 50 cubic feet per second or to diverters using siphons in~~
7 ~~the tidal zone.~~

8 ~~(3)~~

9 (2) (A) The terms of, and eligibility for, any grant or loan
10 awarded or administered by the department, the board, or the
11 California Bay-Delta Authority *or its successor* on behalf of a
12 person that is subject to paragraph (1) shall be conditioned on
13 compliance with that paragraph.

14 (B) Notwithstanding subparagraph (A), the board may determine
15 that a person is eligible for a grant or loan even though the person
16 is not complying with paragraph (1), if both of the following apply:

17 (i) The board determines that the grant or loan will assist the
18 grantee or loan recipient in complying with paragraph (1).

19 (ii) The person has submitted to the board a one-year schedule
20 for complying with paragraph (1).

21 (C) It is the intent of the Legislature that the requirements of
22 this subdivision shall complement and not affect the scope of
23 authority granted to the board by provisions of law other than this
24 article.

25 ~~(f) For persons not subject to paragraph (1) of subdivision (e);~~
26 ~~a description of the acreage of each crop irrigated, the average~~
27 ~~number of people served with water, the average number of stock~~
28 ~~watered, and the nature and extent of any other use during the~~
29 ~~preceding calendar year, or other equivalent information that~~
30 ~~indicates the quantity of water used as may be prescribed by the~~
31 ~~board. Those who maintain water measuring devices and keep~~
32 ~~monthly records of water diversions shall state the quantity of~~
33 ~~water diverted by months during the preceding calendar year.~~

34 ~~(g)~~

35 ~~(f)~~ The purpose of use.

36 ~~(h)~~

37 (g) A general description of the area in which the water was
38 used. ~~If the water was used on an area within the $\frac{1}{16}$ section~~
39 ~~containing the point of diversion, a statement to that effect will~~
40 ~~suffice; otherwise a description or sketch of the general area of~~

~~use shall be given.~~ *The location of the place of use shall be depicted on a specific United States Geological Survey topographic map and on any other maps with identifiable landmarks. If assigned, the public land description to the nearest 40-acre subdivision and the assessor's parcel number shall also be provided.*

(i)

(h) The year in which the diversion was commenced as near as is known.

SEC. 65. Section 5106 of the Water Code is amended to read:

5106. (a) Neither the statements submitted under this part nor the determination of facts by the board pursuant to Section 5105 shall establish or constitute evidence of a right to divert or use water.

(b) (1) The board may rely on the names and addresses included in statements submitted under this part for the purpose of determining the names and addresses of persons who are to receive notices with regard to proceedings before the board.

(2) Notwithstanding paragraph (1), any person may submit, in writing, a request to the board to provide notification to a different address, and the board shall provide the notification to that address.

(3) If the board provides notice to persons who file statements under this part, the notice shall not be determined to be inadequate on the basis that notice was not received by a person, other than a party to whom the board's action is directed, who fails to file a statement required to be filed under this part.

(4) This subdivision does not affect the requirement in Section 2527 to provide notice to all persons who own land that appears to be riparian to the stream system.

(c) In any proceeding before the board to determine whether an application for a permit to appropriate water should be approved, any statement submitted under this part or determination by the board pursuant to Section 5105 is evidence of the facts stated therein.

(d) (1) *In any proceeding before the board in which it is alleged that an appropriative right has ceased or is subject to forfeiture for nonuse because water has not been put to beneficial use, there shall be a rebuttable presumption that no use required to be included in a statement submitted under this part occurred unless 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. 66. Section 5107 of the Water Code is amended to read:

6 5107. (a) The making of any willful misstatement pursuant to
7 this part is a misdemeanor punishable by a fine not exceeding one
8 thousand dollars (\$1,000) or by imprisonment in the county jail
9 for not to exceed six months, or both.

10 (b) Any person who *fails to file a statement required to be filed*
11 *under this part for a diversion or use that occurs after January 1,*
12 *2009, who tampers with any measuring device, or who makes a*
13 *material misstatement pursuant to this part may be liable civilly*
14 *as provided in ~~subdivision (c)~~ subdivisions (c) and (d).*

15 (c) Civil liability may be administratively imposed by the board
16 pursuant to Section 1055 in an amount not to exceed the following
17 amounts:

18 (1) For failure to file a statement, one thousand dollars (\$1,000),
19 plus five hundred dollars (\$500) per day for each additional day
20 on which the violation continues if the person fails to file a
21 statement within 30 days after the board has called the violation
22 to the attention of that person.

23 (2) For a violation resulting from a physical malfunction of a
24 measuring device not caused by the person or any other
25 unintentional misstatement, two hundred fifty dollars (\$250), plus
26 two hundred fifty dollars (\$250) per day for each additional day
27 on which the measuring device continues to malfunction or the
28 misstatement is not corrected if the person fails to correct or repair
29 the measuring device or correct the misstatement within 60 days
30 after the board has called the malfunction or violation to the
31 attention of that person.

32 (3) For knowingly tampering with any measuring device or
33 knowingly making a material misstatement in a statement filed
34 under this part, twenty-five thousand dollars (\$25,000), plus one
35 thousand dollars (\$1,000) for each day on which the violation
36 continues if the person fails to correct the violation within 30 days
37 after the board has called the violation to the attention of that
38 person.

39 (4) For any other violation, five hundred dollars (\$500), plus
40 two hundred fifty dollars (\$250) for each additional day on which

1 *the violation continues if the person fails to correct the violation*
2 *within 30 days after the board has called the violation to the*
3 *attention of that person.*

4 *(d) When an additional penalty may be imposed under*
5 *subdivision (c) for failure to correct a violation or correct or repair*
6 *a malfunctioning measuring device within a specified period after*
7 *the violation has been called to a person's attention by the board,*
8 *the board, for good cause, may provide for a longer period for*
9 *correction of the problem, and the additional penalty shall not*
10 *apply if the violation is corrected within the period specified by*
11 *the board.*

12 ~~*(e) Civil liability may be administratively imposed by the board*~~
13 ~~*pursuant to Section 1055 in an amount not to exceed five hundred*~~
14 ~~*dollars (\$500) for each violation.*~~

15 *(e) In determining the appropriate amount, the board shall*
16 *consider all relevant circumstances, including, but not limited to,*
17 *all of the following factors:*

- 18 *(1) The extent of harm caused by the violation.*
- 19 *(2) The nature and persistence of the violation.*
- 20 *(3) The length of time over which the violation occurs.*
- 21 *(4) Any corrective action undertaken by the violator.*
- 22 *(5) The ability of the violator to pay.*
- 23 *(6) The effect on the ability of the violator to continue in*
24 *business.*
- 25 *(7) Other matters as justice may require.*

26 ~~*(f)*~~
27 *(f) (1) All funds recovered pursuant to this section shall be*
28 *deposited in the Water Rights Fund established pursuant to Section*
29 *1550.*

30 *(2) Any funds recovered pursuant to this section that exceed*
31 *those that were authorized before the effective date of the*
32 *amendments made to this section by ____ of the 2009–10 Seventh*
33 *Extraordinary Session of the Legislature shall be deposited in the*
34 *Water Rights Protection Subaccount in the Water Rights Fund*
35 *established pursuant to Section 1550.*

36 *(g) Remedies under this section are in addition to, and do not*
37 *supersede or limit, any other remedies, civil or criminal.*

38 SEC. 67. Section 5108 of the Water Code is repealed.

39 ~~*5108. Statements filed pursuant to this part shall be for*~~
40 ~~*informational purposes only, and neither the failure to file a*~~

1 ~~statement nor any error in the information filed shall have any~~
2 ~~legal consequences whatsoever other than those specified in this~~
3 ~~part.~~

4 SEC. 68. Part 2.55 (commencing with Section 10608) is added
5 to Division 6 of the Water Code, to read:

6
7 PART 2.55. SUSTAINABLE WATER USE AND DEMAND
8 REDUCTION
9

10 CHAPTER 1. GENERAL DECLARATIONS AND POLICY
11

12 10608. The Legislature finds and declares all of the following:

13 (a) Water is a public resource that the California Constitution
14 protects against waste and unreasonable use.

15 (b) Growing population, climate change, and the need to protect
16 and grow California's economy while protecting and restoring our
17 fish and wildlife habitats make it essential that the state manage
18 its water resources as efficiently as possible.

19 (c) Diverse regional water supply portfolios will increase water
20 supply reliability and reduce dependence on the Delta.

21 (d) Reduced water use through conservation provides significant
22 energy and environmental benefits, and can help protect water
23 quality, improve streamflows, and reduce greenhouse gas
24 emissions.

25 (e) The success of state and local water conservation programs
26 to increase efficiency of water use is best determined on the basis
27 of measurable outcomes related to water use or efficiency.

28 (f) Improvements in technology and management practices offer
29 the potential for increasing water efficiency in California over
30 time, providing an essential water management tool to meet the
31 need for water for urban, agricultural, and environmental uses.

32 (g) The Governor has called for a 20 percent per capita reduction
33 in urban water use statewide by 2020.

34 (h) The factors used to formulate water use efficiency targets
35 can vary significantly from location to location based on factors
36 including weather, patterns of urban and suburban development,
37 and past efforts to enhance water use efficiency.

38 (i) Per capita water use is a valid measure of a water provider's
39 efforts to reduce urban water use within its service area. However,
40 per capita water use is less useful for measuring relative water use

1 efficiency between different water providers. Differences in
2 weather, historical patterns of urban and suburban development,
3 and density of housing in a particular location need to be
4 considered when assessing per capita water use as a measure of
5 efficiency.

6 10608.4. It is the intent of the Legislature, by the enactment
7 of this part, to do all of the following:

8 (a) Require all water suppliers to increase the efficiency of use
9 of this essential resource.

10 (b) Establish a framework to meet the state targets for urban
11 water conservation identified in this part and called for by the
12 Governor.

13 (c) Measure increased efficiency of urban water use on a per
14 capita basis.

15 (d) Establish a method or methods for urban retail water
16 suppliers to determine targets for achieving increased water use
17 efficiency by the year 2020, in accordance with the Governor's
18 goal of a 20-percent reduction.

19 (e) Establish consistent water use efficiency planning and
20 implementation standards for urban water suppliers and agricultural
21 water suppliers.

22 (f) Promote urban water conservation standards that are
23 consistent with the California Urban Water Conservation Council's
24 adopted best management practices and the requirements for
25 demand management in Section 10631.

26 (g) Establish standards that recognize and provide credit to water
27 suppliers that made substantial capital investments in urban water
28 conservation since the drought of the early 1990s.

29 (h) Recognize and account for the investment of urban retail
30 water suppliers in providing recycled water for beneficial uses.

31 (i) Require implementation of specified efficient water
32 management practices for agricultural water suppliers.

33 (j) Support the economic productivity of California's
34 agricultural, commercial, and industrial sectors.

35 (k) Advance regional water resources management.

36 10608.8. (a) (1) Water use efficiency measures adopted and
37 implemented pursuant to this part or Part 2.8 (commencing with
38 Section 10800) are water conservation measures subject to the
39 protections provided under Section 1011.

(2) An urban water supplier's failure to meet the per capita targets established in Section 10608.20 shall not be evidence of waste or unreasonable use under Section 2 of Article X of the California Constitution or Section 100. Nothing in this paragraph limits the use of data reported to the department or the board in litigation or an administrative proceeding. This paragraph shall become inoperative on January 1, 2020.

(3) To the extent feasible, the department and the board shall provide for the use of water conservation reports required under this part to meet the requirements of Section 1011 for water conservation reporting.

(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, including, but not limited to, changes in agricultural economics or population growth may have greater effects on water use. This part does not limit the economic productivity of California's agricultural, commercial, or industrial sectors.

(d) The requirements of this part do not apply to an agricultural water supplier that is a party to the Quantification Settlement Agreement, as defined in subdivision (a) of Section 1 of Chapter 617 of the Statutes of 2002, during the period within which the Quantification Settlement Agreement remains in effect. After the expiration of the Quantification Settlement Agreement, to the extent conservation water projects implemented as part of the Quantification Settlement Agreement remain in effect, the conserved water created as part of those projects shall be credited against the obligations of the agricultural water supplier pursuant to this part.

CHAPTER 2. DEFINITIONS

10608.12. Unless the context otherwise requires, the following definitions govern the construction of this part:

(a) "Agricultural water supplier" means a water supplier, either publicly or privately owned, providing water to 10,000 or more

1 irrigated acres, excluding recycled water. “Agricultural water
2 supplier” includes a supplier or contractor for water, regardless of
3 the basis of right, that distributes or sells water for ultimate resale
4 to customers.

5 (b) “Base daily per capita water use” means any of the
6 following:

7 (1) The urban retail water supplier’s estimate of its average
8 gross water use, reported in gallons per capita per day and
9 calculated over a continuous 10-year period ending no earlier than
10 December 31, 2004, and no later than December 31, 2010.

11 (2) For an urban retail water supplier that meets at least 10
12 percent of its 2008 measured retail water demand through recycled
13 water that is delivered within the service area of an urban retail
14 water supplier or its urban wholesale water supplier, the urban
15 retail water supplier may extend the calculation described in
16 paragraph (1) up to an additional five years to a maximum of a
17 continuous 15-year period ending no earlier than December 31,
18 2004, and no later than December 31, 2010.

19 (3) For the purposes of Section 10608.22, the urban retail water
20 supplier’s estimate of its average gross water use, reported in
21 gallons per capita per day and calculated over a continuous
22 five-year period ending no earlier than December 31, 2007, and
23 no later than December 31, 2010.

24 (c) “Baseline commercial, industrial, and institutional water
25 use” means an urban retail water supplier’s base daily per capita
26 water use for commercial, industrial, and institutional users.

27 (d) “Commercial water user” means a water user that provides
28 or distributes a product or service.

29 (e) “Compliance daily per capita water use” means the gross
30 water use during the final year of the reporting period, reported in
31 gallons per capita per day.

32 (f) “Disadvantaged community” means a community with an
33 annual median household income that is less than 80 percent of
34 the statewide annual median household income.

35 (g) “Gross water use” means the total volume of water, whether
36 treated or untreated, entering the distribution system of an urban
37 retail water supplier, excluding all of the following:

38 (1) Recycled water that is delivered within the service area of
39 an urban retail water supplier or its urban wholesale water supplier.

(2) The net volume of water that the urban retail water supplier places into long-term storage.

(3) The volume of water the urban retail water supplier conveys for use by another urban water supplier.

(4) The volume of water delivered for agricultural use, except as otherwise provided in subdivision (f) of Section 10608.24.

(h) “Industrial water user” means a water user that is primarily a manufacturer or processor of materials as defined by the North American Industry Classification System code sectors 31 to 33, inclusive, or an entity that is a water user primarily engaged in research and development.

(i) “Institutional water user” means a water user dedicated to public service. This type of user includes, among other users, higher education institutions, schools, courts, churches, hospitals, government facilities, and nonprofit research institutions.

(j) “Interim urban water use target” means 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.

(k) “Locally cost effective” means that the present value of the local benefits of implementing an agricultural efficiency water management practice is greater than or equal to the present value of the local cost of implementing that measure.

(l) “Process water” means water used for producing a product or product content or water used for research and development, including, but not limited to, continuous manufacturing processes, water used for testing and maintaining equipment used in producing a product or product content, and water used in combined heat and power facilities used in producing a product or product content. Process water does not mean incidental water uses not related to the production of a product or product content, including, but not limited to, water used for restrooms, landscaping, air conditioning, heating, kitchens, and laundry.

(m) “Recycled water” means recycled water, as defined in subdivision (n) of Section 13050, that is used to offset potable demand, including recycled water supplied for direct use and indirect potable reuse, that meets the following requirements, where applicable:

(1) For groundwater recharge, including recharge through spreading basins, water supplies that are all of the following:

1 (A) Metered.

2 (B) Developed through planned investment by the urban water
3 supplier or a wastewater treatment agency.

4 (C) Treated to a minimum tertiary level.

5 (D) Delivered within the service area of an urban retail water
6 supplier or its urban wholesale water supplier that helps an urban
7 retail water supplier meet its urban water use target.

8 (2) For reservoir augmentation, water supplies that meet the
9 criteria of paragraph (1) and are conveyed through a distribution
10 system constructed specifically for recycled water.

11 (n) “Regional water resources management” means sources of
12 supply resulting from watershed-based planning for sustainable
13 local water reliability or any of the following alternative sources
14 of water:

15 (1) The capture and reuse of stormwater or rainwater.

16 (2) The use of recycled water.

17 (3) The desalination of brackish groundwater.

18 (4) The conjunctive use of surface water and groundwater in a
19 manner that is consistent with the safe yield of the groundwater
20 basin.

21 (o) “Reporting period” means the years for which an urban retail
22 water supplier reports compliance with the urban water use targets.

23 (p) “Urban retail water supplier” means a water supplier, either
24 publicly or privately owned, that directly provides potable
25 municipal water to more than 3,000 end users or that supplies more
26 than 3,000 acre-feet of potable water annually at retail for
27 municipal purposes.

28 (q) “Urban water use target” means the urban retail water
29 supplier’s targeted future daily per capita water use.

30 (r) “Urban wholesale water supplier,” means a water supplier,
31 either publicly or privately owned, that provides more than 3,000
32 acre-feet of water annually at wholesale for potable municipal
33 purposes.

34
35 CHAPTER 3. URBAN RETAIL WATER SUPPLIERS
36

37 10608.16. (a) The state shall achieve a 20-percent reduction
38 in urban per capita water use in California on or before December
39 31, 2020.

(b) The state shall make incremental progress towards the state target specified in subdivision (a) by reducing urban 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 July 1, 2011. 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 December 31, 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 standard. Upon completion of the department's 2016 report to the Legislature pursuant to Section 10608.42, this standard may be adjusted by the Legislature by statute.

(B) For landscape irrigated through dedicated or residential meters or connections, 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 the approach specified in this subparagraph shall use satellite imagery, site visits, or other best available technology to develop an accurate estimate of landscaped areas.

(C) For commercial, industrial, and institutional uses, a 10-percent reduction in water use from the baseline commercial, industrial, and institutional water use by 2020.

(3) Ninety-five percent of the applicable state hydrologic region target, as set forth in the state's draft 20x2020 Water Conservation

1 Plan (dated April 30, 2009). If the service area of an urban water
2 supplier includes more than one hydrologic region, the supplier
3 shall apportion its service area to each region based on population
4 or area.

5 (4) A method that shall be identified and developed by the
6 department, through a public process, and reported to the
7 Legislature no later than December 31, 2010. The method
8 developed by the department shall identify per capita targets that
9 cumulatively result in a statewide 20 percent reduction in urban
10 daily per capita water use by December 31, 2020. If the department
11 does not adopt a method pursuant to this paragraph, the urban retail
12 water supplier shall adopt a method described in paragraph (1),
13 (2), or (3). In developing urban daily per capita water use targets,
14 the department shall do all of the following:

15 (A) Consider climatic differences within the state.

16 (B) Consider population density differences within the state.

17 (C) Provide flexibility to communities and regions in meeting
18 the targets.

19 (D) Consider different levels of per capita water use according
20 to plant water needs in different regions.

21 (E) Consider different levels of commercial, industrial, and
22 institutional water use in different regions of the state.

23 (F) Avoid placing an undue hardship on communities that have
24 implemented conservation measures or taken actions to keep per
25 capita water use low.

26 (c) The department shall update the method described in
27 paragraph (4) of subdivision (b) and report to the Legislature by
28 December 31, 2014. An urban retail water supplier that adopted
29 the method described in paragraph (4) of subdivision (b) may adopt
30 a new urban daily per capita water use target pursuant to this
31 updated method.

32 (d) An urban retail water supplier shall include in its urban water
33 management plan required pursuant to Part 2.6 (commencing with
34 Section 10610) due in 2010 the baseline daily per capita water use,
35 urban water use target, interim urban water use target, and
36 compliance daily per capita water use, along with the bases for
37 determining those estimates, including references to supporting
38 data.

1 (e) When calculating per capita values for the purposes of this
2 chapter, an urban retail water supplier shall determine population
3 using federal, state, and local population reports and projections.

4 (f) An urban retail water supplier may update its 2020 urban
5 water use target in its 2015 urban water management plan required
6 pursuant to Part 2.6 (commencing with Section 10610).

7 (g) (1) The department, through a public process and in
8 consultation with the California Urban Water Conservation
9 Council, shall develop technical methodologies and criteria for
10 the consistent implementation of this part, including, but not limited
11 to, both of the following:

12 (A) Methodologies for calculating base daily per capita water
13 use, baseline commercial, industrial, and institutional water use,
14 compliance daily per capita water use, gross water use, service
15 area population, indoor residential water use, and landscaped area
16 water use.

17 (B) Criteria for adjustments pursuant to subdivisions (d) and
18 (e) of Section 10608.24.

19 (2) The department shall post the methodologies and criteria
20 developed pursuant to this subdivision on its Internet Web site,
21 and make written copies available, by October 1, 2010. An urban
22 retail water supplier shall use the methods developed by the
23 department in compliance with this part.

24 (h) (1) The department shall adopt regulations for
25 implementation of the provisions relating to process water in
26 accordance with subdivision (l) of Section 10608.12, subdivision
27 (e) of Section 10608.24, and subdivision (d) of Section 10608.26.

28 (2) The initial adoption of a regulation authorized by this
29 subdivision is deemed to address an emergency, for purposes of
30 Sections 11346.1 and 11349.6 of the Government Code, and the
31 department is hereby exempted for that purpose from the
32 requirements of subdivision (b) of Section 11346.1 of the
33 Government Code. After the initial adoption of an emergency
34 regulation pursuant to this subdivision, the department shall not
35 request approval from the Office of Administrative Law to readopt
36 the regulation as an emergency regulation pursuant to Section
37 11346.1 of the Government Code.

38 (i) An urban retail water supplier shall be granted an extension
39 to July 1, 2011, for adoption of an urban water management plan
40 pursuant to Part 2.6 (commencing with Section 10610) due in 2010

1 to allow use of technical methodologies developed by the
2 department pursuant to paragraph (4) of subdivision (b) and
3 subdivision (g). An urban retail water supplier that adopts an urban
4 water management plan due in 2010 that does not use the
5 methodologies developed by the department pursuant to
6 subdivision (g) shall amend the plan by July 1, 2011, to comply
7 with this part.

8 10608.22. Notwithstanding the method adopted by an urban
9 retail water supplier pursuant to Section 10608.20, an urban retail
10 water supplier's per capita daily water use reduction shall be no
11 less than 5 percent of base daily per capita water use as defined in
12 paragraph (3) of subdivision (b) of Section 10608.12. This section
13 does not apply to an urban retail water supplier with a base daily
14 per capita water use at or below 100 gallons per capita per day.

15 10608.24. (a) Each urban retail water supplier shall meet its
16 interim urban water use target by December 31, 2015.

17 (b) Each urban retail water supplier shall meet its urban water
18 use target by December 31, 2020.

19 (c) An urban retail water supplier's compliance daily per capita
20 water use shall be the measure of progress toward achievement of
21 its urban water use target.

22 (d) (1) When determining compliance daily per capita water
23 use, an urban retail water supplier may consider the following
24 factors:

25 (A) Differences in evapotranspiration and rainfall in the baseline
26 period compared to the compliance reporting period.

27 (B) Substantial changes to commercial or industrial water use
28 resulting from increased business output and economic
29 development that have occurred during the reporting period.

30 (C) Substantial changes to institutional water use resulting from
31 fire suppression services or other extraordinary events, or from
32 new or expanded operations, that have occurred during the
33 reporting period.

34 (2) If the urban retail water supplier elects to adjust its estimate
35 of compliance daily per capita water use due to one or more of the
36 factors described in paragraph (1), it shall provide the basis for,
37 and data supporting, the adjustment in the report required by
38 Section 10608.40.

39 (e) When developing the urban water use target pursuant to
40 Section 10608.20, an urban retail water supplier that has a

1 substantial percentage of industrial water use in its service area,
2 may exclude process water from the calculation of gross water use
3 to avoid a disproportionate burden on another customer sector.

4 (f) (1) An urban retail water supplier that includes agricultural
5 water use in an urban water management plan pursuant to Part 2.6
6 (commencing with Section 10610) may include the agricultural
7 water use in determining gross water use. An urban retail water
8 supplier that includes agricultural water use in determining gross
9 water use and develops its urban water use target pursuant to
10 paragraph (2) of subdivision (b) of Section 10608.20 shall use a
11 water efficient standard for agricultural irrigation of 100 percent
12 of reference evapotranspiration multiplied by the crop coefficient
13 for irrigated acres.

14 (2) An urban retail water supplier, that is also an agricultural
15 water supplier, is not subject to the requirements of Chapter 4
16 (commencing with Section 10608.48), if the agricultural water use
17 is incorporated into its urban water use target pursuant to paragraph
18 (1).

19 10608.26. (a) In complying with this part, an urban retail water
20 supplier shall conduct at least one public hearing to accomplish
21 all of the following:

22 (1) Allow community input regarding the urban retail water
23 supplier's implementation plan for complying with this part.

24 (2) Consider the economic impacts of the urban retail water
25 supplier's implementation plan for complying with this part.

26 (3) Adopt a method, pursuant to subdivision (b) of Section
27 10608.20, for determining its urban water use target.

28 (b) In complying with this part, an urban retail water supplier
29 may meet its urban water use target through efficiency
30 improvements in any combination among its customer sectors. An
31 urban retail water supplier shall avoid placing a disproportionate
32 burden on any customer sector.

33 (c) For an urban retail water supplier that supplies water to a
34 United States Department of Defense military installation, the
35 urban retail water supplier's implementation plan for complying
36 with this part shall consider the United States Department of
37 Defense military installation's requirements under federal
38 Executive Order 13423.

39 (d) (1) Any ordinance or resolution adopted by an urban retail
40 water supplier after the effective date of this section shall not

1 require existing customers as of the effective date of this section,
2 to undertake changes in product formulation, operations, or
3 equipment that would reduce process water use, but may provide
4 technical assistance and financial incentives to those customers to
5 implement efficiency measures for process water. This section
6 shall not affect the operation of an ordinance or resolution adopted
7 under Section 375 prior to the effective date of this section.

8 (2) This part shall not be construed or enforced so as to interfere
9 with the requirements of Chapter 4 (commencing with Section
10 113980) to Chapter 13 (commencing with Section 114380),
11 inclusive, of Part 7 of Division 104 of the Health and Safety Code,
12 or any requirement or standard for the protection of public health,
13 public safety, or worker safety established by federal, state, or
14 local government or recommended by recognized standard setting
15 organizations or trade associations.

16 10608.28. (a) An urban retail water supplier may meet its
17 urban water use target within its retail service area, or through
18 mutual agreement, by any of the following:

19 (1) Through an urban wholesale water supplier.

20 (2) Through a regional agency authorized to plan and implement
21 water conservation, including, but not limited to, an agency
22 established under the Bay Area Water Supply and Conservation
23 Agency Act (Division 31 (commencing with Section 81300)).

24 (3) Through a regional water management group as defined in
25 Section 10537.

26 (4) By an integrated regional water management funding area.

27 (5) By hydrologic region.

28 (6) Through other appropriate geographic scales for which
29 computation methods have been developed by the department.

30 (b) A regional water management group, with the written
31 consent of its member agencies, may undertake any or all planning,
32 reporting, and implementation functions under this chapter for the
33 member agencies that consent to those activities. Any data or
34 reports shall provide information both for the regional water
35 management group and separately for each consenting urban retail
36 water supplier and urban wholesale water supplier.

37 10608.32. All costs incurred pursuant to this part by a water
38 utility regulated by the Public Utilities Commission may be
39 recoverable in rates subject to review and approval by the Public
40 Utilities Commission, and may be recorded in a memorandum

1 account and reviewed for reasonableness by the Public Utilities
2 Commission.

3 10608.36. Urban wholesale water suppliers shall include in
4 the urban water management plans required pursuant to Part 2.6
5 (commencing with Section 10610) an assessment of their present
6 and proposed future measures, programs, and policies to help
7 achieve the water use reductions required by this part.

8 10608.40. Urban water retail suppliers shall report to the
9 department on their progress in meeting their urban water use
10 targets as part of their urban water management plans submitted
11 pursuant to Section 10631. The data shall be reported using a
12 standardized form developed pursuant to Section 10608.52.

13 10608.42. The department shall review the 2015 urban water
14 management plans and report to the Legislature by December 31,
15 2016, on progress towards achieving a 20-percent reduction in
16 urban water use by December 31, 2020. The report shall include
17 recommendations on changes to water efficiency standards or
18 urban water use targets in order to achieve the 20-percent reduction
19 and to reflect updated efficiency information and technology
20 changes.

21 10608.43. The department, in conjunction with the California
22 Urban Water Conservation Council, by April 1, 2010, shall convene
23 a representative task force consisting of academic experts, urban
24 retail water suppliers, environmental organizations, commercial
25 water users, industrial water users, and institutional water users to
26 develop alternative best management practices for commercial,
27 industrial, and institutional users and an assessment of the potential
28 statewide water use efficiency improvement in the commercial,
29 industrial, and institutional sectors that would result from
30 implementation of these best management practices. The taskforce,
31 in conjunction with the department, shall submit a report to the
32 Legislature by April 1, 2012, that shall include a review of multiple
33 sectors within commercial, industrial, and institutional users and
34 that shall recommend water use efficiency standards for
35 commercial, industrial, and institutional users among various
36 sectors of water use. The report shall include, but not be limited
37 to, the following:

38 (a) Appropriate metrics for evaluating commercial, industrial,
39 and institutional water use.

(b) Evaluation of water demands for manufacturing processes, goods, and cooling.

(c) Evaluation of public infrastructure necessary for delivery of recycled water to the commercial, industrial, and institutional sectors.

(d) Evaluation of institutional and economic barriers to increased recycled water use within the commercial, industrial, and institutional sectors.

(e) Identification of technical feasibility and cost of the best management practices to achieve more efficient water use statewide in the commercial, industrial, and institutional sectors that is consistent with the public interest and reflects past investments in water use efficiency.

10608.44. Each state agency shall reduce water use on facilities it operates to support urban retail water suppliers in meeting the target identified in Section 10608.16.

CHAPTER 4. AGRICULTURAL WATER SUPPLIERS

10608.48. (a) On or before July 31, 2012, an agricultural water supplier shall implement efficient water management practices pursuant to subdivisions (b) and (c).

(b) Agricultural water suppliers shall implement all of the following critical efficient management practices:

(1) Measure the volume of water delivered to customers with sufficient accuracy to comply with subdivision (a) of Section 531.10 and to implement volumetric pricing pursuant to paragraph (2).

(2) Adopt a pricing structure for water customers based at least in part on quantity delivered.

(c) Agricultural water suppliers shall implement additional efficient management practices, including, but not limited to, practices to accomplish all of the following, if the measures are locally cost effective and technically feasible:

(1) Facilitate alternative land use for lands with exceptionally high water duties or whose irrigation contributes to significant problems, including drainage.

(2) Facilitate use of available recycled water that otherwise would not be used beneficially, meets all health and safety criteria, and does not harm crops or soils.

- 1 (3) Facilitate the financing of capital improvements for on-farm
2 irrigation systems.
- 3 (4) Implement an incentive pricing structure that promotes one
4 or more of the following goals:
 - 5 (A) More efficient water use at the farm level.
 - 6 (B) Conjunctive use of groundwater.
 - 7 (C) Appropriate increase of groundwater recharge.
 - 8 (D) Reduction in problem drainage.
 - 9 (E) Improved management of environmental resources.
 - 10 (F) Effective management of all water sources throughout the
11 year by adjusting seasonal pricing structures based on current
12 conditions.
- 13 (5) Expand line or pipe distribution systems, and construct
14 regulatory reservoirs to increase distribution system flexibility and
15 capacity, decrease maintenance, and reduce seepage.
- 16 (6) Increase flexibility in water ordering by, and delivery to,
17 water customers within operational limits.
- 18 (7) Construct and operate supplier spill and tailwater recovery
19 systems.
- 20 (8) Increase planned conjunctive use of surface water and
21 groundwater within the supplier service area.
- 22 (9) Automate canal control structures.
- 23 (10) Facilitate or promote customer pump testing and evaluation.
- 24 (11) Designate a water conservation coordinator who will
25 develop and implement the water management plan and prepare
26 progress reports.
- 27 (12) Provide for the availability of water management services
28 to water users. These services may include, but are not limited to,
29 all of the following:
 - 30 (A) On-farm irrigation and drainage system evaluations.
 - 31 (B) Normal year and real-time irrigation scheduling and crop
32 evapotranspiration information.
 - 33 (C) Surface water, groundwater, and drainage water quantity
34 and quality data.
 - 35 (D) Agricultural water management educational programs and
36 materials for farmers, staff, and the public.
- 37 (13) Evaluate the policies of agencies that provide the supplier
38 with water to identify the potential for institutional changes to
39 allow more flexible water deliveries and storage.

1 (14) Evaluate and improve the efficiencies of the supplier's
2 pumps.

3 (d) Agricultural water suppliers shall include in the agricultural
4 water management plans required pursuant to Part 2.8
5 (commencing with Section 10800) a report on which efficient
6 water management practices have been implemented and are
7 planned to be implemented, an estimate of the water use efficiency
8 improvements that have occurred since the last report, and an
9 estimate of the water use efficiency improvements estimated to
10 occur five and 10 years in the future. If an agricultural water
11 supplier determines that an efficient water management practice
12 is not locally cost effective or technically feasible, the supplier
13 shall submit information documenting that determination.

14 (e) The data shall be reported using a standardized form
15 developed pursuant to Section 10608.52.

16 (f) An agricultural water supplier may meet the requirements
17 of subdivisions (d) and (e) by submitting to the department a water
18 conservation plan submitted to the United States Bureau of
19 Reclamation that meets the requirements described in Section
20 10828.

21 (g) On or before December 31, 2013, December 31, 2016, and
22 December 31, 2021, the department, in consultation with the board,
23 shall submit to the Legislature a report on the agricultural efficient
24 water management practices that have been implemented and are
25 planned to be implemented and an assessment of the manner in
26 which the implementation of those efficient water management
27 practices has affected and will affect agricultural operations,
28 including estimated water use efficiency improvements, if any.

29 (h) The department may update the efficient water management
30 practices required pursuant to subdivision (c), in consultation with
31 the Agricultural Water Management Council, the United States
32 Bureau of Reclamation, and the board. All efficient water
33 management practices for agricultural water use pursuant to this
34 chapter shall be adopted or revised by the department only after
35 the department conducts public hearings to allow participation of
36 the diverse geographical areas and interests of the state.

37 (i) (1) The department shall adopt regulations that provide for
38 a range of options that agricultural water suppliers may use or
39 implement to comply with the measurement requirement in
40 paragraph (1) of subdivision (b).

(2) The initial adoption of a regulation authorized by this subdivision is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted for that purpose from the requirements of subdivision (b) of Section 11346.1 of the Government Code. After the initial adoption of an emergency regulation pursuant to this subdivision, the department shall not request approval from the Office of Administrative Law to readopt the regulation as an emergency regulation pursuant to Section 11346.1 of the Government Code.

CHAPTER 5. SUSTAINABLE WATER MANAGEMENT

10608.50. (a) The department, in consultation with the board, shall promote implementation of regional water resources management practices through increased incentives and removal of barriers consistent with state and federal law. Potential changes may include, but are not limited to, all of the following:

(1) Revisions to the requirements for urban and agricultural water management plans.

(2) Revisions to the requirements for integrated regional water management plans.

(3) Revisions to the eligibility for state water management grants and loans.

(4) Revisions to state or local permitting requirements that increase water supply opportunities, but do not weaken water quality protection under state and federal law.

(5) Increased funding for research, feasibility studies, and project construction.

(6) Expanding technical and educational support for local land use and water management agencies.

(b) No later than January 1, 2011, and updated as part of the California Water Plan, the department, in consultation with the board, and with public input, shall propose new statewide targets, or review and update existing statewide targets, for regional water resources management practices, including, but not limited to, recycled water, brackish groundwater desalination, and infiltration and direct use of urban stormwater runoff.

CHAPTER 6. STANDARDIZED DATA COLLECTION

10608.52. (a) The department, in consultation with the board, the California Bay-Delta Authority or its successor agency, the State Department of Public Health, and the Public Utilities Commission, shall develop a single standardized water use reporting form to meet the water use information needs of each agency, including the needs of urban water suppliers that elect to determine and report progress toward achieving targets on a regional basis as provided in subdivision (a) of Section 10608.28.

(b) At a minimum, the form shall be developed to accommodate information sufficient to assess an urban water supplier's compliance with conservation targets pursuant to Section 10608.24 and an agricultural water supplier's compliance with implementation of efficient water management practices pursuant to subdivision (a) of Section 10608.48. The form shall accommodate reporting by urban water suppliers on an individual or regional basis as provided in subdivision (a) of Section 10608.28.

CHAPTER 7. FUNDING PROVISIONS

10608.56. (a) On and after July 1, 2016, an urban retail water supplier is not eligible for a water grant or loan awarded or administered by the state unless the supplier complies with this part.

(b) On and after July 1, 2013, an agricultural water supplier is not eligible for a water grant or loan awarded or administered by the state unless the supplier complies with this part.

(c) Notwithstanding subdivision (a), the department shall determine that an urban retail water supplier is eligible for a water grant or loan even though the supplier has not met the per capita reductions required pursuant to Section 10608.24, if the urban retail water supplier has submitted to the department for approval a schedule, financing plan, and budget, to be included in the grant or loan agreement, for achieving the per capita reductions. The supplier may request grant or loan funds to achieve the per capita reductions to the extent the request is consistent with the eligibility requirements applicable to the water funds.

1 (d) Notwithstanding subdivision (b), the department shall
2 determine that an agricultural water supplier is eligible for a water
3 grant or loan even though the supplier is not implementing all of
4 the efficient water management practices described in Section
5 10608.48, if the agricultural water supplier has submitted to the
6 department for approval a schedule, financing plan, and budget,
7 to be included in the grant or loan agreement, for implementation
8 of the efficient water management practices. The supplier may
9 request grant or loan funds to implement the efficient water
10 management practices to the extent the request is consistent with
11 the eligibility requirements applicable to the water funds.

12 (e) Notwithstanding subdivision (a), the department shall
13 determine that an urban retail water supplier is eligible for a water
14 grant or loan even though the supplier has not met the per capita
15 reductions required pursuant to Section 10608.24, if the urban
16 retail water supplier has submitted to the department for approval
17 documentation demonstrating that its entire service area qualifies
18 as a disadvantaged community.

19 (f) The department shall not deny eligibility to an urban retail
20 water supplier or agricultural water supplier in compliance with
21 the requirements of this part and Part 2.8 (commencing with
22 Section 10800), that is participating in a multiagency water project,
23 or an integrated regional water management plan, developed
24 pursuant to Section 75026 of the Public Resources Code, solely
25 on the basis that one or more of the agencies participating in the
26 project or plan is not implementing all of the requirements of this
27 part or Part 2.8 (commencing with Section 10800).

28 10608.60. (a) It is the intent of the Legislature that funds made
29 available by Section 75026 of the Public Resources Code should
30 be expended, consistent with Division 43 (commencing with
31 Section 75001) of the Public Resources Code and upon
32 appropriation by the Legislature, for grants to implement this part.
33 In the allocation of funding, it is the intent of the Legislature that
34 the department give consideration to disadvantaged communities
35 to assist in implementing the requirements of this part.

36 (b) It is the intent of the Legislature that funds made available
37 by Section 75041 of the Public Resources Code, should be
38 expended, consistent with Division 43 (commencing with Section
39 75001) of the Public Resources Code and upon appropriation by
40 the Legislature, for direct expenditures to implement this part.

CHAPTER 8. QUANTIFYING AGRICULTURAL WATER USE
EFFICIENCY

10608.64. The department, in consultation with the Agricultural Water Management Council, academic experts, and other stakeholders, shall develop a methodology for quantifying the efficiency of agricultural water use. Alternatives to be assessed shall include, but not be limited to, determination of efficiency levels based on crop type or irrigation system distribution uniformity. On or before December 31, 2011, the department shall report to the Legislature on a proposed methodology and a plan for implementation. The plan shall include the estimated implementation costs and the types of data needed to support the methodology. Nothing in this section authorizes the department to implement a methodology established pursuant to this section.

SEC. 69. Section 10631.5 of the Water Code is amended to read:

10631.5. (a) (1) Beginning January 1, 2009, 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 shall be conditioned on the implementation of the water demand management measures described in Section 10631, as determined by the department pursuant to subdivision (b).

(2) For the purposes of this section, water management grants and loans include funding for programs and projects for surface water or groundwater storage, recycling, desalination, water conservation, water supply reliability, and water supply augmentation. This section does not apply to water management projects funded by the *federal* American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(3) Notwithstanding paragraph (1), the department shall determine that an urban water supplier is eligible for a water management grant or loan even though the supplier is not implementing all of the water demand management measures described in Section 10631, if the urban water supplier has submitted to the department for approval a schedule, financing plan, and budget, to be included in the grant or loan agreement, for implementation of the water demand management measures. The supplier may request grant or loan funds to implement the

1 water demand management measures to the extent the request is
2 consistent with the eligibility requirements applicable to the water
3 management funds.

4 (4) (A) Notwithstanding paragraph (1), the department shall
5 determine that an urban water supplier is eligible for a water
6 management grant or loan even though the supplier is not
7 implementing all of the water demand management measures
8 described in Section 10631, if an urban water supplier submits to
9 the department for approval documentation demonstrating that a
10 water demand management measure is not locally cost effective.
11 If the department determines that the documentation submitted by
12 the urban water supplier fails to demonstrate that a water demand
13 management measure is not locally cost effective, the department
14 shall notify the urban water supplier and the agency administering
15 the grant or loan program within 120 days that the documentation
16 does not satisfy the requirements for an exemption, and include
17 in that notification a detailed statement to support the
18 determination.

19 (B) For purposes of this paragraph, “not locally cost effective”
20 means that the present value of the local benefits of implementing
21 a water demand management measure is less than the present value
22 of the local costs of implementing that measure.

23 (b) (1) The department, in consultation with the state board and
24 the California Bay-Delta Authority or its successor agency, and
25 after soliciting public comment regarding eligibility requirements,
26 shall develop eligibility requirements to implement the requirement
27 of paragraph (1) of subdivision (a). In establishing these eligibility
28 requirements, the department shall do both of the following:

29 (A) Consider the conservation measures described in the
30 Memorandum of Understanding Regarding Urban Water
31 Conservation in California, and alternative conservation approaches
32 that provide equal or greater water savings.

33 (B) Recognize the different legal, technical, fiscal, and practical
34 roles and responsibilities of wholesale water suppliers and retail
35 water suppliers.

36 (2) (A) For the purposes of this section, the department shall
37 determine whether an urban water supplier is implementing all of
38 the water demand management measures described in Section
39 10631 based on either, or a combination, of the following:

40 (i) Compliance on an individual basis.

(ii) Compliance on a regional basis. Regional compliance shall require participation in a regional conservation program consisting of two or more urban water suppliers that achieves the level of conservation or water efficiency savings equivalent to the amount of conservation or savings achieved if each of the participating urban water suppliers implemented the water demand management measures. The urban water supplier administering the regional program shall provide participating urban water suppliers and the department with data to demonstrate that the regional program is consistent with this clause. The department shall review the data to determine whether the urban water suppliers in the regional program are meeting the eligibility requirements.

(B) The department may require additional information for any 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. 70. Part 2.8 (commencing with Section 10800) of Division 6 of the Water Code is repealed.

SEC. 71. 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 federal 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

1 forth in this chapter on or before December 31, 2012, and shall
2 update that plan on December 31, 2015, and on or before December
3 31 every five years thereafter.

4 (b) Every supplier that becomes an agricultural water supplier
5 after December 31, 2012, shall prepare and adopt an agricultural
6 water management plan within one year after the date it has become
7 an agricultural water supplier.

8 (c) A water supplier that indirectly provides water to customers
9 for agricultural purposes shall not prepare a plan pursuant to this
10 part without the consent of each agricultural water supplier that
11 directly provides that water to its customers.

12 10821. (a) An agricultural water supplier required to prepare
13 a plan pursuant to this part shall notify each city or county within
14 which the supplier provides water supplies that the agricultural
15 water supplier will be preparing the plan or reviewing the plan and
16 considering amendments or changes to the plan. The agricultural
17 water supplier may consult with, and obtain comments from, each
18 city or county that receives notice pursuant to this subdivision.

19 (b) The amendments to, or changes in, the plan shall be adopted
20 and submitted in the manner set forth in Article 3 (commencing
21 with Section 10840).

22 Article 2. Contents of Plans

23
24
25 10825. (a) It is the intent of the Legislature in enacting this
26 part to allow levels of water management planning commensurate
27 with the numbers of customers served and the volume of water
28 supplied.

29 (b) This part does not require the implementation of water
30 conservation programs or practices that are not locally cost
31 effective.

32 10826. An agricultural water management plan shall be adopted
33 in accordance with this chapter. The plan shall do all of the
34 following:

35 (a) Describe the agricultural water supplier and the service area,
36 including all of the following:

- 37 (1) Size of the service area.
38 (2) Location of the service area and its water management
39 facilities.
40 (3) Terrain and soils.

- 1 (4) Climate.
- 2 (5) Operating rules and regulations.
- 3 (6) Water delivery measurements or calculations.
- 4 (7) Water rate schedules and billing.
- 5 (8) Water shortage allocation policies.
- 6 (b) Describe the quantity and quality of water resources of the
- 7 agricultural water supplier, including all of the following:
- 8 (1) Surface water supply.
- 9 (2) Groundwater supply.
- 10 (3) Other water supplies.
- 11 (4) Source water quality monitoring practices.
- 12 (5) Water uses within the agricultural water supplier's service
- 13 area, including all of the following:
- 14 (A) Agricultural.
- 15 (B) Environmental.
- 16 (C) Recreational.
- 17 (D) Municipal and industrial.
- 18 (E) Groundwater recharge.
- 19 (F) Transfers and exchanges.
- 20 (G) Other water uses.
- 21 (6) Drainage from the water supplier's service area.
- 22 (7) Water accounting, including all of the following:
- 23 (A) Quantifying the water supplier's water supplies.
- 24 (B) Tabulating water uses.
- 25 (C) Overall water budget.
- 26 (8) Water supply reliability.
- 27 (c) Include an analysis, based on available information, of the
- 28 effect of climate change on future water supplies.
- 29 (d) Describe previous water management activities.
- 30 (e) Include in the plan the water use efficiency information
- 31 required pursuant to Section 10608.48.
- 32 10827. Agricultural water suppliers that are members of the
- 33 Agricultural Water Management Council, and that submit water
- 34 management plans to that council in accordance with the
- 35 "Memorandum of Understanding Regarding Efficient Water
- 36 Management Practices By Agricultural Water Suppliers In
- 37 California," dated January 1, 1999, may submit the water
- 38 management plans identifying water demand management
- 39 measures currently being implemented, or scheduled for
- 40 implementation, to satisfy the requirements of Section 10826.

10828. (a) Agricultural water suppliers that are required to submit water conservation plans to the United States Bureau of Reclamation pursuant to either the Central Valley Project Improvement Act (Public Law 102-575) or the Reclamation Reform Act of 1982, or both, may submit those water conservation plans to satisfy the requirements of Section 10826, if both of the following apply:

(1) The agricultural water supplier has adopted and submitted the water conservation plan to the United States Bureau of Reclamation within the previous four years.

(2) The United States Bureau of Reclamation has accepted the water conservation plan as adequate.

(b) This part does not require agricultural water suppliers that are required to submit water conservation plans to the United States Bureau of Reclamation pursuant to either the Central Valley Project Improvement Act (Public Law 102-575) or the Reclamation Reform Act of 1982, or both, to prepare and adopt water conservation plans according to a schedule that is different from that required by the United States Bureau of Reclamation.

10829. An agricultural water supplier may satisfy the requirements of this part by adopting an urban water management plan pursuant to Part 2.6 (commencing with Section 10610) or by participation in area wide, regional, watershed, or basinwide water management planning if those plans meet or exceed the requirements of this part.

Article 3. Adoption and Implementation of Plans

10840. Every agricultural water supplier shall prepare its plan pursuant to Article 2 (commencing with Section 10825).

10841. Prior to adopting a plan, the agricultural water supplier shall make the proposed plan available for public inspection, and shall hold a public hearing on the plan. Prior to the hearing, notice of the time and place of hearing shall be published within the jurisdiction of the publicly owned agricultural water supplier pursuant to Section 6066 of the Government Code. A privately owned agricultural water supplier shall provide an equivalent notice within its service area and shall provide a reasonably equivalent opportunity that would otherwise be afforded through a public hearing process for interested parties to provide input on the plan.

1 After the hearing, the plan shall be adopted as prepared or as
2 modified during or after the hearing.

3 10842. An agricultural water supplier shall implement the plan
4 adopted pursuant to this chapter in accordance with the schedule
5 set forth in its plan, as determined by the governing body of the
6 agricultural water supplier.

7 10843. (a) An agricultural water supplier shall submit to the
8 entities identified in subdivision (b) a copy of its plan no later than
9 30 days after the adoption of the plan. Copies of amendments or
10 changes to the plans shall be submitted to the entities identified in
11 subdivision (b) within 30 days after the adoption of the
12 amendments or changes.

13 (b) An agricultural water supplier shall submit a copy of its plan
14 and amendments or changes to the plan to each of the following
15 entities:

16 (1) The department.

17 (2) Any city, county, or city and county within which the
18 agricultural water supplier provides water supplies.

19 (3) Any groundwater management entity within which
20 jurisdiction the agricultural water supplier extracts or provides
21 water supplies.

22 (4) Any urban water supplier within which jurisdiction the
23 agricultural water supplier provides water supplies.

24 (5) Any city or county library within which jurisdiction the
25 agricultural water supplier provides water supplies.

26 (6) The California State Library.

27 (7) Any local agency formation commission serving a county
28 within which the agricultural water supplier provides water
29 supplies.

30 10844. (a) Not later than 30 days after the date of adopting its
31 plan, the agricultural water supplier shall make the plan available
32 for public review on the agricultural water supplier's Internet Web
33 site.

34 (b) An agricultural water supplier that does not have an Internet
35 Web site shall submit to the department, not later than 30 days
36 after the date of adopting its plan, a copy of the adopted plan in
37 an electronic format. The department shall make the plan available
38 for public review on the department's Internet Web site.

39 10845. (a) The department shall prepare and submit to the
40 Legislature, on or before December 31, 2013, and thereafter in the

1 years ending in six and years ending in one, a report summarizing
2 the status of the plans adopted pursuant to this part.

3 (b) The report prepared by the department shall identify the
4 outstanding elements of any plan adopted pursuant to this part.
5 The report shall include an evaluation of the effectiveness of this
6 part in promoting efficient agricultural water management practices
7 and recommendations relating to proposed changes to this part, as
8 appropriate.

9 (c) The department shall provide a copy of the report to each
10 agricultural water supplier that has submitted its plan to the
11 department. The department shall also prepare reports and provide
12 data for any legislative hearing designed to consider the
13 effectiveness of plans submitted pursuant to this part.

14 (d) This section does not authorize the department, in preparing
15 the report, to approve, disapprove, or critique individual plans
16 submitted pursuant to this part.

17
18 CHAPTER 4. MISCELLANEOUS PROVISIONS
19

20 10850. (a) Any action or proceeding to attack, review, set
21 aside, void, or annul the acts or decisions of an agricultural water
22 supplier on the grounds of noncompliance with this part shall be
23 commenced as follows:

24 (1) An action or proceeding alleging failure to adopt a plan shall
25 be commenced within 18 months after that adoption is required
26 by this part.

27 (2) Any action or proceeding alleging that a plan, or action taken
28 pursuant to the plan, does not comply with this part shall be
29 commenced within 120 days after submitting the plan or
30 amendments to the plan to entities in accordance with Section
31 10844 or the taking of that action.

32 (b) In an action or proceeding to attack, review, set aside, void,
33 or annul a plan, or an action taken pursuant to the plan by an
34 agricultural water supplier, on the grounds of noncompliance with
35 this part, the inquiry shall extend only to whether there was a
36 prejudicial abuse of discretion. Abuse of discretion is established
37 if the agricultural water supplier has not proceeded in a manner
38 required by law, or if the action by the agricultural water supplier
39 is not supported by substantial evidence.

10851. The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to the preparation and adoption of plans pursuant to this part. This part does not exempt projects for implementation of the plan or for expanded or additional water supplies from the California Environmental Quality Act.

10852. An agricultural water supplier is not eligible for a water grant or loan awarded or administered by the state unless the supplier complies with this part.

10853. No agricultural water supplier that provides water to less than 25,000 irrigated acres, excluding recycled water, shall be required to implement the requirements of this part or Part 2.55 (commencing with Section 10608) unless sufficient funding has specifically been provided to that water supplier for these purposes.

SEC. 72. Part 2.11 (commencing with Section 10920) is added to Division 6 of the Water Code, to read:

PART 2.11. GROUNDWATER MONITORING

CHAPTER 1. GENERAL PROVISIONS

10920. (a) It is the intent of the Legislature that on or before 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) It is further the intent of the Legislature that the department continue to maintain its current network of monitoring wells, including groundwater elevation and groundwater quality monitoring wells, and that the department continue to coordinate monitoring with local entities.

10921. This part does not require the monitoring of groundwater elevations in an area that is not within a basin or subbasin.

10922. This part does not expand or otherwise affect the powers or duties of the department relating to groundwater beyond those expressly granted by this part.

CHAPTER 2. DEFINITIONS

10925. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this part.

(a) “Basin” or “subbasin” means a groundwater basin or subbasin identified and defined in the department’s Bulletin No. 118.

(b) “Bulletin No. 118” means the department’s report entitled “California’s Groundwater: Bulletin 118” updated in 2003, or as it may be subsequently updated or revised in accordance with Section 12924.

(c) “Monitoring entity” means a party conducting or coordinating the monitoring of groundwater elevations pursuant to this part.

(d) “Monitoring functions” and “groundwater monitoring functions” means the monitoring of groundwater elevations, the reporting of those elevations to the department, and other related actions required by this part.

(e) “Monitoring groundwater elevations” means monitoring groundwater elevations, coordinating the monitoring of groundwater elevations, or both.

(f) “Voluntary cooperative groundwater monitoring association” means an association formed for the purposes of monitoring groundwater elevations pursuant to Section 10935.

CHAPTER 3. GROUNDWATER MONITORING PROGRAM

10927. Any of the following entities may assume responsibility for monitoring and reporting groundwater elevations in all or a part of a basin or subbasin in accordance with this part:

(a) A watermaster or water management engineer appointed by a court or pursuant to statute to administer a final judgment determining rights to groundwater.

(b) (1) A groundwater management agency with statutory authority to manage groundwater pursuant to its principal act that is monitoring groundwater elevations in all or a part of a groundwater basin or subbasin on or before January 1, 2010.

(2) A water replenishment district established pursuant to Division 18 (commencing with Section 60000). This part does not

1 expand or otherwise affect the authority of a water replenishment
2 district relating to monitoring groundwater elevations.

3 (c) A local agency that is managing all or part of a groundwater
4 basin or subbasin pursuant to Part 2.75 (commencing with Section
5 10750) and that was monitoring groundwater elevations in all or
6 a part of a groundwater basin or subbasin on or before January 1,
7 2010, or a local agency or county that is managing all or part of a
8 groundwater basin or subbasin pursuant to any other legally
9 enforceable groundwater management plan with provisions that
10 are substantively similar to those described in that part and that
11 was monitoring groundwater elevations in all or a part of a
12 groundwater basin or subbasin on or before January 1, 2010.

13 (d) A local agency that is managing all or part of a groundwater
14 basin or subbasin pursuant to an integrated regional water
15 management plan prepared pursuant to Part 2.2 (commencing with
16 Section 10530) that includes a groundwater management
17 component that complies with the requirements of Section 10753.7.

18 (e) A county that is not managing all or a part of a groundwater
19 basin or subbasin pursuant to a legally enforceable groundwater
20 management plan with provisions that are substantively similar to
21 those described in Part 2.75 (commencing with Section 10750).

22 (f) A voluntary cooperative groundwater monitoring association
23 formed pursuant to Section 10935.

24 10928. (a) Any entity described in subdivision (a) or (b) of
25 Section 10927 that seeks to assume groundwater monitoring
26 functions in accordance with this part shall notify the department,
27 in writing, on or before January 1, 2011. The notification shall
28 include all of the following information:

29 (1) The entity's name, address, telephone number, and any other
30 relevant contact information.

31 (2) The specific authority described in Section 10927 pursuant
32 to which the entity qualifies to assume the groundwater monitoring
33 functions.

34 (3) A map showing the area for which the entity is requesting
35 to perform the groundwater monitoring functions.

36 (4) A statement that the entity will comply with all of the
37 requirements of this part.

38 (b) Any entity described in subdivision (c), (d), (e), or (f) of
39 Section 10927 that seeks to assume groundwater monitoring
40 functions in accordance with this part shall notify the department,

1 in writing, by January 1, 2011. The information provided in the
2 notification shall include all of the following:

3 (1) The entity's name, address, telephone number, and any other
4 relevant contact information.

5 (2) The specific authority described in Section 10927 pursuant
6 to which the entity qualifies to assume the groundwater monitoring
7 functions.

8 (3) For entities that seek to qualify pursuant to subdivision (c)
9 or (d) of Section 10927, the notification shall also include a copy
10 of the current groundwater management plan or the groundwater
11 component of the integrated regional water management plan, as
12 appropriate.

13 (4) For entities that seek to qualify pursuant to subdivision (f)
14 of Section 10927, the notification shall include a statement of
15 intention to meet the requirements of Section 10935.

16 (5) A map showing the area for which the entity is proposing
17 to perform the groundwater monitoring functions.

18 (6) A statement that the entity will comply with all of the
19 requirements of this part.

20 (7) A statement describing the ability and qualifications of the
21 entity to conduct the groundwater monitoring functions required
22 by this part.

23 (c) The department may request additional information that it
24 deems necessary for the purposes of determining the area that is
25 proposed to be monitored or the qualifications of the entity to
26 perform the groundwater monitoring functions.

27 10929. (a) (1) The department shall review all notifications
28 received pursuant to Section 10928.

29 (2) Upon the receipt of a notification pursuant to subdivision
30 (a) of Section 10928, the department shall verify that the notifying
31 entity has the appropriate authority under subdivision (a) or (b) of
32 Section 10927.

33 (3) Upon the receipt of a notification pursuant to subdivision
34 (b) of Section 10928, the department shall do both of the following:

35 (A) Verify that each notification is complete.

36 (B) Assess the qualifications of the notifying party.

37 (b) If the department has questions about the completeness or
38 accuracy of a notification, or the qualifications of a party, the
39 department shall contact the party to resolve any deficiencies. If
40 the department is unable to resolve the deficiencies, the department

1 shall notify the party in writing that the notification will not be
2 considered further until the deficiencies are corrected.

3 (c) If the department determines that more than one party seeks
4 to become the monitoring entity for the same portion of a basin or
5 subbasin, the department shall consult with the interested parties
6 to determine which party will perform the monitoring functions.
7 In determining which party will perform the monitoring functions
8 under this part, the department shall follow the order in which
9 entities are identified in Section 10927.

10 (d) The department shall advise each party on the status of its
11 notification within three months of receiving the notification.

12 10930. Upon completion of each review pursuant to Section
13 10929, the department shall do both of the following if it
14 determines that a party will perform monitoring functions under
15 this part:

16 (a) Notify the party in writing that it is a monitoring entity and
17 the specific portion of the basin or subbasin for which it shall
18 assume groundwater monitoring functions.

19 (b) Post on the department's Internet Web site information that
20 identifies the monitoring entity and the portion of the basin or
21 subbasin for which the monitoring entity will be responsible.

22 10931. (a) The department shall work cooperatively with each
23 monitoring entity to determine the manner in which groundwater
24 elevation information should be reported to the department pursuant
25 to this part. In determining what information should be reported
26 to the department, the department shall defer to existing monitoring
27 programs if those programs result in information that demonstrates
28 seasonal and long-term trends in groundwater elevations. The
29 department shall collaborate with the State Department of Public
30 Health to ensure that the information reported to the department
31 will not result in the inappropriate disclosure of the physical
32 address or geographical location of drinking water sources, storage
33 facilities, pumping operational data, or treatment facilities.

34 (b) (1) For the purposes of this part, the department may
35 recommend improvements to an existing monitoring program,
36 including recommendations for additional monitoring wells.

37 (2) The department may not require additional monitoring wells
38 unless funds are provided for that purpose.

1 10932. Monitoring entities shall commence monitoring and
2 reporting groundwater elevations pursuant to this part on or before
3 January 1, 2012.

4 10933. (a) On or before January 1, 2012, the department shall
5 commence to identify the extent of monitoring of groundwater
6 elevations that is being undertaken within each basin and subbasin.

7 (b) The department shall prioritize groundwater basins and
8 subbasins for the purpose of implementing this section. In
9 prioritizing the basins and subbasins, the department shall, to the
10 extent data are available, consider all of the following:

11 (1) The population overlying the basin or subbasin.

12 (2) The rate of current and projected growth of the population
13 overlying the basin or subbasin.

14 (3) The number of public supply wells that draw from the basin
15 or subbasin.

16 (4) The total number of wells that draw from the basin or
17 subbasin.

18 (5) The irrigated acreage overlying the basin or subbasin.

19 (6) The degree to which persons overlying the basin or subbasin
20 rely on groundwater as their primary source of water.

21 (7) Any documented impacts on the groundwater within the
22 basin or subbasin, including overdraft, subsidence, saline intrusion,
23 and other water quality degradation.

24 (8) Any other information determined to be relevant by the
25 department.

26 (c) If the department determines that all or part of a basin or
27 subbasin is not being monitored pursuant to this part, the
28 department shall do all of the following:

29 (1) Attempt to contact all well owners within the area not being
30 monitored.

31 (2) Determine if there is an interest in establishing any of the
32 following:

33 (A) A groundwater management plan pursuant to Part 2.75
34 (commencing with Section 10750).

35 (B) An integrated regional water management plan pursuant to
36 Part 2.2 (commencing with Section 10530) that includes a
37 groundwater management component that complies with the
38 requirements of Section 10753.7.

39 (C) A voluntary groundwater monitoring association pursuant
40 to Section 10935.

(d) If the department determines that there is sufficient interest in establishing a plan or association described in paragraph (2) of subdivision (c), or if the county agrees to perform the groundwater monitoring functions in accordance with this part, the department shall work cooperatively with the interested parties to comply with the requirements of this part within two years.

(e) (1) 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), the department shall notify the county or counties within which the basin or subbasin is located, in whole or in part, of that determination.

(2) Any county notified by the department pursuant to paragraph (1) that there is insufficient interest in establishing a plan or association described in paragraph (2) of subdivision (c) shall, within two years of notification by the department, do one of the following:

(A) Form or facilitate the formation of a plan or association described in paragraph (2) of subdivision (c) to perform the groundwater monitoring functions in accordance with this part.

(B) Perform the groundwater monitoring functions in accordance with this part.

10933.5. If a county is notified pursuant to subdivision (e) of Section 10933 and fails to undertake one of the two actions described in paragraph (2) of subdivision (e) of Section 10933, the county and the entities described in subdivisions (a) to (d), inclusive, of Section 10927 shall not be eligible for a water grant or loan awarded or administered by the state until either of the following occurs:

(a) The county complies with paragraph (2) of subdivision (e) of Section 10933.

(b) One of the entities described in Section 10927, with regard to that basin or subbasin, agrees to perform groundwater monitoring functions in accordance with this part.

10934. This part does not provide any new or additional authority to any entity described in Section 10927 to do either of the following:

(a) To enter private property without the consent of the property owner.

1 (b) To require a private property owner to submit groundwater
2 monitoring information to the entity.

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 10936. Costs incurred by the department pursuant to this
22 chapter may be funded from unallocated bond revenues pursuant
23 to paragraph (12) of subdivision (a) of Section 75027 of the Public
24 Resources Code, to the extent those funds are available for those
25 purposes.

26 SEC. 73. Section 12924 of the Water Code is repealed.

27 ~~12924. (a) The department shall, in conjunction with other~~
28 ~~public agencies, conduct an investigation of the state's groundwater~~
29 ~~basins. The department shall identify the state's groundwater basins~~
30 ~~on the basis of geological and hydrological conditions and~~
31 ~~consideration of political boundary lines whenever practical. The~~
32 ~~department shall also investigate existing general patterns of~~
33 ~~groundwater pumping and groundwater recharge within such basins~~
34 ~~to the extent necessary to identify basins which are subject to~~
35 ~~critical conditions of overdraft.~~

36 ~~(b) The department shall report its findings to the Governor and~~
37 ~~the Legislature not later than January 1, 1980.~~

38 SEC. 74. Section 12924 is added to the Water Code, to read:

39 12924. (a) The department, in conjunction with other public
40 agencies, shall conduct an investigation of the state's groundwater

basins. The department shall identify the state's groundwater basins on the basis of geological and hydrological conditions and consideration of political boundary lines whenever practical. The department shall also investigate existing general patterns of groundwater pumping and groundwater recharge within those basins to the extent necessary to identify basins that are subject to critical conditions of overdraft.

(b) The department shall report its findings to the Governor and the Legislature not later than January 1, 2012, and thereafter in years ending in 5 or 0.

SEC. 75. Division 26.4 (commencing with Section 79400) of the Water Code is repealed.

SEC. 76. 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. Resolving the crisis requires fundamental reorganization of the state's management of Delta watershed resources.

(b) 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 provide for the sustainable management of the Sacramento-San Joaquin Delta ecosystem, to provide for a more reliable water

1 supply for the state, to protect and enhance the quality of water
2 supply from the Delta, and to establish a governance structure that
3 will direct efforts across state agencies to develop a legally
4 enforceable Delta Plan.

5 85002. The Legislature finds and declares that the
6 Sacramento-San Joaquin Delta, referred to as “the Delta” in this
7 division, is a critically important natural resource for California
8 and the nation. It serves Californians concurrently as both the hub
9 of the California water system and the most valuable estuary and
10 wetland ecosystem on the west coast of North and South America.

11 85003. The Legislature finds and declares all of the following:

12 (a) Originally, the Delta was a shallow wetland with water
13 covering the area for many months of the year. Natural levees,
14 created by deposits of sediment, allowed some islands to emerge
15 during the dry summer months. Salinity would fluctuate, depending
16 on the season and the amount of precipitation in any one year, and
17 the species that comprised the Delta ecosystem had evolved and
18 adapted to this unique, dynamic system.

19 (b) Delta property ownership developed pursuant to the federal
20 Swamp Land Act of 1850, and state legislation enacted in 1861,
21 and as a result of the construction of levees to keep previously
22 seasonal wetlands dry throughout the year. That property
23 ownership, and the exercise of associated rights, continue to depend
24 on the landowners’ maintenance of those nonproject levees and
25 do not include any right to state funding of levee maintenance or
26 repair.

27 (c) In 1933, the Legislature approved the California Central
28 Valley Project Act, which relied upon the transfer of Sacramento
29 River water south through the Delta and maintenance of a more
30 constant salinity regime by using upstream reservoir releases of
31 freshwater to create a hydraulic salinity barrier. As a result of the
32 operations of state and federal water projects, the natural salinity
33 variations in the Delta have been altered. Restoring a healthy
34 estuarine ecosystem in the Delta may require developing a more
35 natural salinity regime in parts of the Delta.

36 85004. The Legislature finds and declares all of the following:

37 (a) The economies of major regions of the state depend on the
38 ability to use water within the Delta watershed or to import water
39 from the Delta watershed. More than two-thirds of the residents

1 of the state and more than two million acres of highly productive
2 farm land receive water exported from the Delta watershed.

3 (b) Providing a more reliable water supply for the state involves
4 implementation of water use efficiency and conservation projects,
5 wastewater reclamation projects, desalination, and new and
6 improved infrastructure, including water storage and Delta
7 conveyance facilities.

8
9 CHAPTER 2. DELTA POLICY

10
11 85020. The policy of the State of California is to achieve the
12 following objectives that the Legislature declares are inherent in
13 the coequal goals for management of the Delta:

14 (a) Manage the Delta's water and environmental resources and
15 the water resources of the state over the long term.

16 (b) Protect and enhance the unique cultural, recreational, and
17 agricultural values of the California Delta as an evolving place.

18 (c) Restore the Delta ecosystem, including its fisheries and
19 wildlife, as the heart of a healthy estuary and wetland ecosystem.

20 (d) Promote statewide water conservation, water use efficiency,
21 and sustainable water use.

22 (e) Improve water quality to protect human health and the
23 environment consistent with achieving water quality objectives in
24 the Delta.

25 (f) Improve the water conveyance system and expand statewide
26 water storage.

27 (g) Reduce risks to people, property, and state interests in the
28 Delta by effective emergency preparedness, appropriate land uses,
29 and investments in flood protection.

30 (h) Establish a new governance structure with the authority,
31 responsibility, accountability, scientific support, and adequate and
32 secure funding to achieve these objectives.

33 85021. The policy of the State of California is to reduce reliance
34 on the Delta in meeting California's future water supply needs
35 through a statewide strategy of investing in improved regional
36 supplies, conservation, and water use efficiency. Each region that
37 depends on water from the Delta watershed shall improve its
38 regional self-reliance for water through investment in water use
39 efficiency, water recycling, advanced water technologies, local

1 and regional water supply projects, and improved regional
2 coordination of local and regional water supply efforts.

3 85022. (a) It is the intent of the Legislature that state and local
4 land use actions identified as “covered actions” pursuant to Section
5 85058.5 be consistent with the Delta Plan. This section’s findings,
6 policies, and goals apply to Delta land use planning and
7 development.

8 (b) The actions of the council shall be guided by the findings,
9 policies, and goals expressed in this section when reviewing
10 decisions of the commission pursuant to Division 19.5
11 (commencing with Section 29700) of the Public Resources Code.

12 (c) The Legislature finds and declares all of the following:

13 (1) The Delta is a distinct and valuable natural resource of vital
14 and enduring interest to all the people and exists as a delicately
15 balanced estuary and wetland ecosystem of hemispheric
16 importance.

17 (2) The permanent protection of the Delta’s natural and scenic
18 resources is the paramount concern to present and future residents
19 of the state and nation.

20 (3) To promote the public safety, health, and welfare, and to
21 protect public and private property, wildlife, fisheries, and the
22 natural environment, it is necessary to protect and enhance the
23 ecosystem of the Delta and prevent its further deterioration and
24 destruction.

25 (4) Existing developed uses, and future developments that are
26 carefully planned and developed consistent with the policies of
27 this division, are essential to the economic and social well-being
28 of the people of this state and especially to persons living and
29 working in the Delta.

30 (d) The fundamental goals for managing land use in the Delta
31 are to do all of the following:

32 (1) Protect, maintain, enhance, and, where feasible, restore the
33 overall quality of the Delta environment and its natural and
34 artificial resources.

35 (2) Ensure the utilization and conservation of Delta resources,
36 taking into account the social and economic needs of the people
37 of the state.

38 (3) Maximize public access to Delta resources and maximize
39 public recreational opportunities in the Delta consistent with sound

resources conservation principles and constitutionally protected rights of private property owners.

(4) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the Delta.

(5) Develop new or improved aquatic and terrestrial habitat and protect existing habitats to advance the goal of restoring and enhancing the Delta ecosystem.

(6) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.

85023. The longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta.

CHAPTER 3. MISCELLANEOUS PROVISIONS

85031. (a) This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law. This division does not limit or otherwise affect the application of Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections 12200 to 12220, inclusive.

(b) Nothing in this division supersedes, limits, or otherwise modifies the applicability of Chapter 10 (commencing with Section 1700) of Part 2 of Division 2, including petitions related to any new conveyance constructed or operated in accordance with Chapter 2 (commencing with Section 85320) of Part 4.

(c) Unless otherwise expressly provided, nothing in this division supersedes, reduces, or otherwise affects existing legal protections, both procedural and substantive, relating to the board's regulation of diversion and use of water, including, but not limited to, the protection provided to municipal interests by Sections 106 and 106.5, and changes in water rights. Nothing in this division expands or otherwise alters the board's existing authority to regulate the

1 diversion and use of water or the courts' existing concurrent
2 jurisdiction over California water rights.

3 85032. This division does not affect any of the following:

4 (a) The Natural Community Conservation Planning Act (Chapter
5 10 (commencing with Section 2800) of Division 3 of the Fish and
6 Game Code).

7 (b) The California Endangered Species Act (Chapter 1.5
8 (commencing with Section 2050) of Division 3 of the Fish and
9 Game Code).

10 (c) The Fish and Game Code.

11 (d) The Porter-Cologne Water Quality Control Act (Division 7
12 (commencing with Section 13000).

13 (e) Chapter 8 (commencing with Section 12930) of Part 6 of
14 Division 6.

15 (f) The California Environmental Quality Act (Division 13
16 (commencing with Section 21000) of the Public Resources Code).

17 (g) Section 1702.

18 (h) The application of the public trust doctrine.

19 (i) Any water right.

20 (j) The liability of the state for flood protection in the Delta or
21 its watershed.

22 85034. (a) (1) The council shall administer all contracts,
23 grants, easements, and agreements made or entered into by the
24 California Bay-Delta Authority under Division 26.4 (commencing
25 with Section 79400), as that division read on December 31, 2009.

26 (2) The exercise of the authority described in paragraph (1) is
27 not subject to review or approval by the Department of General
28 Services.

29 (3) A contract, lease, license, or any other agreement to which
30 the California Bay-Delta Authority is a party is not void or voidable
31 as a result of the implementation of this subdivision, but shall
32 continue in full force and effect until the end of its term.

33 (b) The council shall be the successor to and shall assume from
34 the California Bay-Delta Authority all of the administrative rights,
35 abilities, obligations, and duties of that authority.

36 (c) The council shall have possession and control of all records,
37 papers, equipment, supplies, contracts, leases, agreements, and
38 other property, real or personal, connected with the administration
39 of Division 26.4 (commencing with Section 79400), as that division

1 read on December 31, 2009, or held for the benefit or use of the
2 California Bay-Delta Authority.

3 (d) The council shall assume from the California Bay-Delta
4 Authority all responsibility to manage, in accordance with Chapter
5 5 (commencing with Section 85280) of Part 3, the science program
6 element that was required to be undertaken by Division 26.4
7 (commencing with Section 79400).

8 (e) Consistent with the responsibilities and duties assumed by
9 the council pursuant to this section, all staff, resources, and funding
10 within the Natural Resources Agency and the Department of
11 Forestry and Fire Protection for the support of the CALFED
12 Bay-Delta Program are hereby transferred to, and may be expended
13 for the purposes of, the council. The executive officer of the council
14 shall confer with the Director of Fish and Game, the director of
15 the department, and the executive director of the board regarding
16 possible reallocation of the staff and resources. The status, position,
17 and rights of any officer or employee shall not be affected by this
18 transfer and all officers and employees shall be retained pursuant
19 to the State Civil Service Act (Part 2 (commencing with Section
20 18500) of Division 5 of Title 2 of the Government Code).

21 22 CHAPTER 4. DEFINITIONS 23

24 85050. Unless the context otherwise requires, the definitions
25 set forth in this chapter govern the construction of this division.

26 85051. "Acquisition" means the acquisition of a fee interest
27 or any other interest, including easements, leases, and development
28 rights.

29 85052. "Adaptive management" means a framework and
30 flexible decisionmaking process for ongoing knowledge
31 acquisition, monitoring, and evaluation leading to continuous
32 improvement in management planning and implementation of a
33 project to achieve specified objectives.

34 85053. "Bay Delta Conservation Plan" or "BDCP" means a
35 multispecies conservation plan.

36 85054. "Coequal goals" means the two goals of providing a
37 more reliable water supply for California and protecting, restoring,
38 and enhancing the Delta ecosystem. The coequal goals shall be
39 achieved in a manner that protects and enhances the unique cultural,

1 recreational, natural resource, and agricultural values of the Delta
2 as an evolving place.

3 85055. “Commission” means the Delta Protection Commission
4 established in Division 19.5 (commencing with Section 29700) of
5 the Public Resources Code.

6 85056. “Conservancy” means the Sacramento-San Joaquin
7 Delta Conservancy established in Section 32320 of the Public
8 Resources Code.

9 85057. “Council” means the Delta Stewardship Council
10 established in Section 85200.

11 85057.5. (a) “Covered action” means a plan, program, project,
12 or activity that meets all of the following conditions:

13 (1) Will occur, in whole or in part, within the boundaries of the
14 Delta or Suisun Marsh.

15 (2) Will be carried out, approved, or funded by the state or a
16 local public agency.

17 (3) Is covered by one or more provisions of the Delta Plan.

18 (4) Will have a significant impact on achievement of one or
19 both of the coequal goals or the implementation of
20 government-sponsored flood control programs to reduce risks to
21 people, property, and state interests in the Delta.

22 (b) “Covered action” does not include any of the following:

23 (1) A regulatory action of a state agency.

24 (2) Routine maintenance and operation of the State Water
25 Project or the federal Central Valley Project.

26 (3) Regional transportation plans prepared pursuant to Section
27 65080 of the Government Code.

28 (4) Any plan, program, project, or activity within the secondary
29 zone of the Delta that the applicable metropolitan planning
30 organization under Section 65080 of the Government Code has
31 determined is consistent with either a sustainable communities
32 strategy or an alternative planning strategy that the State Air
33 Resources Board has determined would, if implemented, achieve
34 the greenhouse gas emission reduction targets established by that
35 board pursuant to subparagraph (A) of paragraph (2) of subdivision
36 (b) of Section 65080 of the Government Code. For purposes of
37 this paragraph, “consistent with” means consistent with the use
38 designation, density, building intensity, transportation plan, and
39 applicable policies specified for the area in the sustainable
40 communities strategy or the alternative planning strategy, as

1 applicable, and any infrastructure necessary to support the plan,
2 program, project, or activity.

3 (5) Routine maintenance and operation of any facility located,
4 in whole or in part, in the Delta, that is owned or operated by a
5 local public agency.

6 (6) Any plan, program, project, or activity that occurs, in whole
7 or in part, in the Delta, if both of the following conditions are met:

8 (A) The plan, program, project, or activity is undertaken by a
9 local public agency that is located, in whole or in part, in the Delta.

10 (B) Either a notice of determination is filed, pursuant to Section
11 21152 of the Public Resources Code, for the plan, program, project,
12 or activity by, or the plan, program, project, or activity is fully
13 permitted by, September 30, 2009.

14 85058. “Delta” means the Sacramento-San Joaquin Delta as
15 defined in Section 12220 and the Suisun Marsh, as defined in
16 Section 29101 of the Public Resources Code.

17 85059. “Delta Plan” means the comprehensive, long-term
18 management plan for the Delta as adopted by the council in
19 accordance with this division.

20 85060. “Delta watershed” means the Sacramento River
21 Hydrologic Region and the San Joaquin River Hydrologic Region
22 as described in the department’s Bulletin No. 160-05.

23 85064. “Public water agency” means a public entity, as defined
24 in Section 514, that provides water service, as defined in Section
25 515.

26 85066. “Restoration” means the application of ecological
27 principles to restore a degraded or fragmented ecosystem and return
28 it to a condition in which its biological and structural components
29 achieve a close approximation of its natural potential, taking into
30 consideration the physical changes that have occurred in the past
31 and the future impact of climate change and sea level rise.

32 85067. “Strategic Plan” means both the “Delta Vision Strategic
33 Plan” issued by the Delta Vision Blue Ribbon Task Force on
34 October 17, 2008, and the “Delta Vision Implementation Report”
35 adopted by the Delta Vision Committee and dated December 31,
36 2008.

PART 2. EARLY ACTIONS

85080. The council shall appoint a Delta Independent Science Board in accordance with Section 85280.

85082. The council shall develop and implement a strategy to appropriately engage participation of the federal agencies with responsibilities in the Delta. This strategy shall include engaging these federal agencies to develop the Delta Plan consistent with the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and Section 8 of the federal Reclamation Act of 1902.

85084. The council shall develop an interim plan that includes recommendations for early actions, projects, and programs.

85084.5. The Department of Fish and Game, in consultation with the United States Fish and Wildlife Service and the National Marine Fisheries Service and based on the best available science, shall develop and recommend to the board Delta flow criteria and quantifiable biological objectives for aquatic and terrestrial species of concern dependent on the Delta. The recommendations shall be developed no later than 12 months after the date of enactment of this division.

85085. The department shall do all of the following:

(a) Coordinate with the Department of Fish and Game, the board, the California regional water quality control boards, and the State Lands Commission efforts to cooperate with the United States Bureau of Reclamation to construct and implement the Two-Gates Fish Protection Demonstration Project by December 1, 2010.

(b) Evaluate the effectiveness of the Three Mile Slough Barrier project.

(c) Expeditiously move ahead with other near term actions as identified in the Strategic Plan.

(d) Assist in implementing early action ecosystem restoration projects, including, but not limited to, Dutch Slough tidal marsh restoration and Meins Island tidal marsh restoration.

85086. (a) The board shall establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010.

(b) It is the intent of the Legislature to establish an accelerated process to determine instream flow needs of the Delta for the

1 purposes of facilitating the planning decisions that are required to
2 achieve the objectives of the Delta Plan.

3 (c) (1) For the purpose of informing planning decisions for the
4 Delta Plan and the Bay Delta Conservation Plan, the board shall,
5 pursuant to its public trust obligations, develop new flow criteria
6 for the Delta ecosystem necessary to protect public trust resources.
7 In carrying out this section, the board shall review existing water
8 quality objectives and use the best available scientific information.
9 The flow criteria for the Delta ecosystem shall include the volume,
10 quality, and timing of water necessary for the Delta ecosystem
11 under different conditions. The flow criteria shall be developed in
12 a public process by the board within nine months of the enactment
13 of this division. The public process shall be in the form of an
14 informational proceeding conducted pursuant to Article 3
15 (commencing with Section 649) of Chapter 1.5 of Division 3 of
16 Title 23 of the California Code of Regulations, and shall provide
17 an opportunity for all interested persons to participate. The flow
18 criteria shall not be considered predecisional with regard to any
19 subsequent board consideration of a permit, including any permit
20 in connection with a final BDCP.

21 (2) Any order approving a change in the point of diversion of
22 the State Water Project or the federal Central Valley Project from
23 the southern Delta to a point on the Sacramento River shall include
24 appropriate Delta flow criteria and shall be informed by the analysis
25 conducted pursuant to this section. The flow criteria shall be subject
26 to modification over time based on a science-based adaptive
27 management program that integrates scientific and monitoring
28 results, including the contribution of habitat and other conservation
29 measures, into ongoing Delta water management.

30 (3) Nothing in this section amends or otherwise affects the
31 application of the board's authority under Part 2 (commencing
32 with Section 1200) of Division 2 to include terms and conditions
33 in permits that in its judgment will best develop, conserve, and
34 utilize in the public interest the water sought to be appropriated.

35 (d) The board shall enter into an agreement with the State Water
36 Project contractors and the federal Central Valley Project
37 contractors, who rely on water exported from the Sacramento River
38 watershed, or a joint powers authority comprised of those
39 contractors, for reimbursement of the costs of the analysis
40 conducted pursuant to this section.

1 (e) The board shall submit its flow criteria determinations
2 pursuant to this section to the council for its information within
3 30 days of completing the determinations.

4 85087. The board, by December 31, 2010, shall submit to the
5 Legislature a prioritized schedule and estimate of costs to complete
6 instream flow studies for the Delta and for high priority rivers and
7 streams in the Delta watershed, not otherwise covered by Section
8 85086, by 2012, and for all major rivers and streams outside the
9 Sacramento River watershed by 2018. In developing this schedule,
10 the board shall consult with the Department of Fish and Game as
11 to the timing of its submission of recommendations for instream
12 flow needs.

13 85088. Until the board issues an order approving a change in
14 the point of diversion of the State Water Project and the federal
15 Central Valley Project from the southern Delta to a point on the
16 Sacramento River as specified in subdivision (c) of Section 85086,
17 the department shall not commence construction of any diversion,
18 conveyance, or other facility necessary to divert and convey water
19 pursuant to the change in point of diversion.

20 85089. Construction of a new Delta conveyance facility shall
21 not be initiated until the persons or entities that contract to receive
22 water from the State Water Project and the federal Central Valley
23 Project or a joint powers authority representing those entities have
24 made arrangements or entered into contracts to pay for both of the
25 following:

26 (a) The costs of the environmental review, planning, design,
27 construction, and mitigation, including mitigation required pursuant
28 to Division 13 (commencing with Section 21000 of the Public
29 Resources Code), required for the construction, operation, and
30 maintenance of any new Delta water conveyance facility.

31 (b) Full mitigation of property tax or assessments levied by local
32 governments or special districts for land used in the construction,
33 location, mitigation, or operation of new Delta conveyance
34 facilities.

PART 3. DELTA GOVERNANCE

CHAPTER 1. DELTA STEWARDSHIP COUNCIL

85200. (a) The Delta Stewardship Council is hereby established as an independent agency of the state.

(b) (1) The council shall consist of seven voting members, of which four members shall be appointed by the Governor and confirmed by the Senate, one member shall be appointed by the Senate Committee on Rules, one member shall be appointed by the Speaker of the Assembly, and one member shall be the Chairperson of the Delta Protection Commission. Initial appointments to the council shall be made by July 1, 2010.

(2) No member of the council shall serve two consecutive terms, but a member may be reappointed after a period of two years following the end of his or her term, except that those members of the council that serve an initial term of one or two years may be immediately appointed to a subsequent full four-year term.

(c) (1) (A) The initial terms of two of the four members appointed by the Governor shall be four years:

(B) The initial terms of two of the four members appointed by the Governor shall be six years.

(C) The initial terms of the members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall be four years.

(D) Upon the expiration of each term described in subparagraphs (A), (B), or (C), the term of each succeeding member shall be four years.

(2) The Chairperson of the Delta Protection Commission shall serve as a member of the council for the period during which he or she holds the position as commission chairperson

(d) Any vacancy shall be filled by the appointing authority within 60 days. If the term of a council member expires, and no successor is appointed within the allotted timeframe, the existing member may serve up to 180 days beyond the expiration of his or her term.

(e) The council members shall select a chairperson from among their members, who shall serve for not more than four years in that capacity.

(f) The council shall meet once a month in a public forum. At least two meetings each year shall take place at a location within the Delta.

85201. (a) The chairperson shall serve full time. Other members shall serve one-third time. The council may select a vice chairperson and other officers determined to be necessary.

(b) Each member of the council shall receive the salary provided for in Section 11564 of the Government Code.

(c) The members of the council shall be reimbursed for expenses necessarily incurred in the performance of official duties.

(d) The council shall appoint an executive officer who shall serve full time at the pleasure of the council.

(e) The executive officer shall hire employees necessary to carry out council functions.

(f) The number of employees and qualifications of those employees shall be determined by the council, subject to the availability of funds.

(g) The salary of each employee of the council shall be determined by the State Personnel Board, and shall reflect the duties and responsibilities of the position.

(h) All persons employed by the council are state employees, subject to the duties, responsibilities, limitations, and benefits of the state.

85202. Council members shall possess diverse expertise and reflect a statewide perspective.

85203. The headquarters of the council shall be located in Sacramento.

85204. The council shall establish and oversee a committee of agencies responsible for implementing the Delta Plan. Each agency shall coordinate its actions pursuant to the Delta Plan with the council and the other relevant agencies.

CHAPTER 2. MISSION, DUTIES, AND RESPONSIBILITIES OF THE COUNCIL

85210. The council has all of the following powers:

(a) To sue or be sued.

(b) To enter into contracts.

(c) To employ the services of public, nonprofit, and private entities.

1 (d) To delegate administrative functions to council staff.

2 (e) To employ its own legal staff or contract with other state or
3 federal agencies for legal services, or both. The council may
4 employ special legal counsel with the approval of the Attorney
5 General.

6 (f) To receive funds, including funds from private and local
7 governmental sources, contributions from public and private
8 sources, as well as state and federal appropriations.

9 (g) To disburse funds through grants, public assistance, loans,
10 and contracts.

11 (h) To request reports from state, federal, and local governmental
12 agencies on issues related to the implementation of the Delta Plan.

13 (i) To adopt regulations or guidelines as needed to carry out the
14 powers and duties identified in this division.

15 (j) To comment on state agency environmental impact reports
16 for projects outside the Delta that the council determines will have
17 a significant impact on the Delta.

18 (k) To hold hearings in all parts of the state necessary to carry
19 out the powers vested in it, and for those purposes has the powers
20 conferred upon the heads of state departments pursuant to Article
21 2 (commencing with Section 11180) of Chapter 2 of Part 1 of
22 Division 3 of Title 2 of the Government Code. Any hearing by the
23 council may be conducted by any member of the council, or other
24 designee, upon authorization of the council, and he or she shall
25 have the powers granted to the council by this section, provided
26 that any final action of the council shall be taken by a majority of
27 the membership of the council at a meeting duly called and held.

28 85210.5. A majority of the voting members of the council shall
29 constitute a quorum for the transaction of the business of the
30 council. A majority vote of the voting membership shall be required
31 to take action with respect to any matter unless otherwise specified
32 in this division. The vote of each member shall be individually
33 recorded.

34 85211. The Delta Plan shall include performance measurements
35 that will enable the council to track progress in meeting the
36 objectives of the Delta Plan. The performance measurements shall
37 include, but need not be limited to, quantitative or otherwise
38 measurable assessments of the status and trends in all of the
39 following:

1 (a) The health of the Delta's estuary and wetland ecosystem for
2 supporting viable populations of aquatic and terrestrial species,
3 habitats, and processes, including viable populations of Delta
4 fisheries and other aquatic organisms.

5 (b) The reliability of California water supply imported from the
6 Sacramento River or the San Joaquin River watershed.

7 85212. The council shall review and provide timely advice to
8 local and regional planning agencies regarding the consistency of
9 local and regional planning documents, including sustainable
10 communities strategies and alternative planning strategies prepared
11 pursuant to Section 65080 of the Government Code, with the Delta
12 Plan. The council's input shall include, but not be limited to,
13 reviewing the consistency of local and regional planning documents
14 with the ecosystem restoration needs of the Delta and reviewing
15 whether the lands set aside for natural resource protection are
16 sufficient to meet the Delta's ecosystem needs. A metropolitan
17 planning organization preparing a regional transportation plan
18 under Section 65080 of the Government Code that includes land
19 within the primary or secondary zones of the Delta shall consult
20 with the council early in the planning process regarding the issues
21 and policy choices relating to the council's advice. No later than
22 60 days prior to the adoption of a final regional transportation plan,
23 the metropolitan planning organization shall provide the council
24 with a draft sustainable communities strategy and an alternative
25 planning strategy, if any. Concurrently, the metropolitan planning
26 organization shall provide notice of its submission to the council
27 in the same manner in which agencies file a certificate of
28 consistency pursuant to Section 85225. If the council concludes
29 that the draft sustainable communities strategy or alternative
30 planning strategy is inconsistent with the Delta Plan, the council
31 shall provide written notice of the claimed inconsistency to the
32 metropolitan planning organization no later than 30 days prior to
33 the adoption of the final regional transportation plan. If the council
34 provides timely notice of a claimed inconsistency, the metropolitan
35 planning organization's adoption of the final regional transportation
36 plan shall include a detailed response to the council's notice.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40

85225.5. To assist state and local public agencies in preparing the required certification, the council shall develop procedures for early consultation with the council on the proposed covered action.

85225.10. (a) Any person who claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal with regard to a certification of consistency submitted to the council.

(b) The appeal shall clearly and specifically set forth the basis for the claim, including specific factual allegations, that the covered action is inconsistent with the Delta Plan. The council may request from the appellant additional information necessary to clarify, amplify, correct, or otherwise supplement the information submitted with the appeal, within a reasonable period.

(c) The council, or by delegation the executive officer, may dismiss the appeal for failure of the appellant to provide information requested by the council within the period provided, if the information requested is in the possession or under the control of the appellant.

85225.15. The appeal shall be filed no later than 30 days after the submission of the certification of consistency. If no person appeals the certification of consistency, the state or local public agency may proceed to implement the covered action.

85225.20. The appeal shall be heard by the council within 60 days of the date of the filing of the appeal, unless the council, or by delegation the executive officer, determines that the issue raised on appeal is not within the council's jurisdiction or does not raise an appealable issue. The council shall make its decision on the appeal within 60 days of hearing the appeal.

85225.20. The appeal shall be heard by the council within 60 days of the date of the filing of the appeal, unless the council, or by delegation the executive officer, determines that the issue raised on appeal is not within the council's jurisdiction or does not raise an appealable issue. The council shall make its decision on the appeal within 60 days of hearing the appeal.

85225.25. After a hearing on an appealed action, the council shall make specific written findings either denying the appeal or remanding the matter to the state or local public agency for reconsideration of the covered action based on the finding that the certification of consistency is not supported by substantial evidence in the record before the state or local public agency that filed the certification. Upon remand, the state or local agency may determine whether to proceed with the covered action. If the agency decides to proceed with the action or with the action as modified to respond to the findings of the council, the agency shall, prior to proceeding with the action, file a revised certification of consistency that addresses each of the findings made by the council and file that revised certification with the council.

85225.30. The council shall adopt administrative procedures governing appeals, which shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

CHAPTER 4. DELTA WATERMASTER

85230. (a) The board, in consultation with the council, shall appoint, for a term of four years, a special master for the Delta, whose title shall be “the Delta Watermaster.”

(b) The board shall adopt internal procedures delegating authority to the Delta Watermaster. The Delta Watermaster shall exercise the board’s authority to provide timely monitoring and enforcement of board orders and permit terms and conditions. The Delta Watermaster’s delegated authority shall include authority to require monitoring and reporting, authority for approvals delegated to an officer or employee of the board by the terms of a water right permit or license, authority to approve temporary urgency changes pursuant to Chapter 6.6 (commencing with section 1435) of Part 2 of Division 2, and authority to issue a notice of proposed cease and desist order or administrative civil liability complaint. The Delta Watermaster’s authority shall be limited to diversions in the Delta and the application and enforcement of the board’s requirements that apply to conditions in the Delta.

(c) The internal procedures adopted by the board shall provide for due process in adjudicative proceedings, and may establish procedures for the issuance of a stay of any order or decision of

1 the Delta Watermaster for which a petition for reconsideration is
2 filed or reconsideration is ordered under Section 1122. The board
3 may provide any additional duties or needs of the Delta
4 Watermaster that the board deems necessary for effective
5 day-to-day enforcement of its decisions.

6 (d) The Delta Watermaster shall submit regular reports to the
7 board and the council including, but not limited to, reports on water
8 rights administration, water quality issues, and conveyance
9 operations.

10
11 CHAPTER 5. DELTA INDEPENDENT SCIENCE BOARD AND DELTA
12 SCIENCE PROGRAM
13

14 85280. (a) The Delta Independent Science Board is hereby
15 established in state government.

16 (1) The Delta Independent Science Board shall consist of no
17 more than 10 members appointed by the council. The term of office
18 for members of the Delta Independent Science Board shall be five
19 years. A member may serve no more than two terms.

20 (2) Members of the Delta Independent Science Board shall be
21 nationally or internationally prominent scientists with appropriate
22 expertise to evaluate the broad range of scientific programs that
23 support adaptive management of the Delta. The members shall not
24 be directly affiliated with a program or agency subject to the review
25 activities of the Delta Independent Science Board.

26 (3) The Delta Independent Science Board shall provide oversight
27 of the scientific research, monitoring, and assessment programs
28 that support adaptive management of the Delta through periodic
29 reviews of each of those programs that shall be scheduled to ensure
30 that all Delta scientific research, monitoring, and assessment
31 programs are reviewed at least once every four years.

32 (4) The Delta Independent Science Board shall submit to the
33 council a report on the results of each review, including
34 recommendations for any changes in the programs reviewed by
35 the board.

36 (b) After consultation with the Delta Independent Science Board,
37 the council shall appoint a lead scientist for the Delta Science
38 Program.

39 (1) The lead scientist shall meet all of the following
40 qualifications:

1 (A) Hold an advanced degree in a field related to water or
2 ecosystem management.

3 (B) Have a strong record of scientific research and publication
4 in peer-reviewed scientific journals in a field related to water or
5 ecosystem management.

6 (C) Have experience advising high-level managers in
7 science-based decisionmaking in the areas of water management
8 and ecosystem restoration.

9 (D) Have the capability to guide the application of an adaptive
10 management process to resource management policy decisions in
11 the Delta.

12 (2) The term of office for the lead scientist shall be no more
13 than three years. The lead scientist may serve no more than two
14 terms.

15 (3) The lead scientist shall oversee the implementation of the
16 Delta Science Program. In carrying out that responsibility, the lead
17 scientist shall regularly consult with the agencies participating in
18 the program.

19 (4) The mission of the Delta Science Program shall be to provide
20 the best possible unbiased scientific information to inform water
21 and environmental decisionmaking in the Delta. That mission shall
22 be carried out through funding research, synthesizing and
23 communicating scientific information to policymakers and
24 decisionmakers, promoting independent scientific peer review,
25 and coordinating with Delta agencies to promote science-based
26 adaptive management. The Delta Science Program shall assist with
27 development and periodic updates of the Delta Plan's adaptive
28 management program.

29 (c) The Delta Science Program shall function as a replacement
30 for, and successor to, the CALFED Science Program and the Delta
31 Independent Science Board shall replace the CALFED Independent
32 Science Board.

33 34 PART 4. COMPREHENSIVE DELTA PLANNING

35 36 CHAPTER 1. THE DELTA PLAN

37
38 85300. (a) On or before January 1, 2012, the council shall
39 develop, adopt, and commence implementation of the Delta Plan
40 pursuant to this part that furthers the coequal goals. The Delta Plan

1 shall include subgoals and strategies to assist in guiding state and
2 local agency actions related to the Delta. In developing the Delta
3 Plan, the council shall consider each of the strategies and actions
4 set forth in the Strategic Plan and may include any of those
5 strategies or actions in the Delta Plan. The Delta Plan may also
6 identify specific actions that state or local agencies may take to
7 implement the subgoals and strategies.

8 (b) In developing the Delta Plan, the council shall consult with
9 federal, state, and local agencies with responsibilities in the Delta.
10 All state agencies with responsibilities in the Delta shall cooperate
11 with the council in developing the Delta Plan, upon request of the
12 council.

13 (c) The council shall review the Delta Plan at least once every
14 five years and may revise it as the council deems appropriate. The
15 council may request any state agency with responsibilities in the
16 Delta to make recommendations with respect to revision of the
17 Delta Plan.

18 (d) (1) The council shall develop the Delta Plan consistent with
19 all of the following:

20 (A) The federal Coastal Zone Management Act of 1972 (16
21 U.S.C. Sec. 1451 et seq.), or an equivalent compliance mechanism.

22 (B) Section 8 of the federal Reclamation Act of 1902.

23 (C) The federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.).

24 (2) If the council adopts a Delta Plan pursuant to the federal
25 Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et
26 seq.), the council shall submit the Delta Plan for approval to the
27 United States Secretary of Commerce pursuant to that act, or to
28 any other federal official assigned responsibility for the Delta
29 pursuant to a federal statute enacted after January 1, 2010.

30 (e) The council shall report to the Legislature no later than
31 March 31, 2012, as to its adoption of the Delta Plan.

32 85301. (a) The commission shall develop, for consideration
33 and incorporation into the Delta Plan by the council, a proposal to
34 protect, enhance, and sustain the unique cultural, historical,
35 recreational, agricultural, and economic values of the Delta as an
36 evolving place, in a manner consistent with the coequal goals. For
37 the purpose of carrying out this subdivision, the commission may
38 include in the proposal the relevant strategies described in the
39 Strategic Plan.

1 (b) (1) The commission shall include in the proposal a plan to
2 establish state and federal designation of the Delta as a place of
3 special significance, which may include application for a federal
4 designation of the Delta as a National Heritage Area.

5 (2) The commission shall include in the proposal a regional
6 economic plan to support increased investment in agriculture,
7 recreation, tourism, and other resilient land uses in the Delta. The
8 regional economic plan shall include detailed recommendations
9 for the administration of the Delta Investment Fund created by
10 Section 29778.5 of the Public Resources Code.

11 (c) For the purposes of assisting the commission in its
12 preparation of the proposal, both of the following actions shall be
13 undertaken:

14 (1) The Department of Parks and Recreation shall prepare a
15 proposal, for submission to the commission, to expand within the
16 Delta the network of state recreation areas, combining existing
17 and newly designated areas. The proposal may incorporate
18 appropriate aspects of any existing plans, including the Central
19 Valley Vision Implementation Plan adopted by the Department of
20 Parks and Recreation.

21 (2) The Department of Food and Agriculture shall prepare a
22 proposal, for submission to the commission, to establish market
23 incentives and infrastructure to protect and enhance the economic
24 and public values of Delta agriculture.

25 (d) The commission shall submit the proposal developed
26 pursuant to subdivision (a) to the council. The council shall
27 consider the proposal and may include any portion of the proposal
28 in the Delta Plan if the council, in its discretion, determines that
29 the portion of the proposal is feasible and consistent with the
30 objectives of the Delta Plan and the purposes of this division.

31 85302. (a) The implementation of the Delta Plan shall further
32 the restoration of the Delta ecosystem and a reliable water supply.

33 (b) The geographic scope of the ecosystem restoration projects
34 and programs identified in the Delta Plan shall be the Delta, except
35 that the Delta Plan may include recommended ecosystem projects
36 outside the Delta that will contribute to achievement of the coequal
37 goals.

38 (c) The Delta Plan shall include measures that promote all of
39 the following characteristics of a healthy Delta ecosystem:

40 (1) Viable populations of native resident and migratory species.

- 1 (2) Functional corridors for migratory species.
- 2 (3) Diverse and biologically appropriate habitats and ecosystem
- 3 processes.
- 4 (4) Reduced threats and stresses on the Delta ecosystem.
- 5 (5) Conditions conducive to meeting or exceeding the goals in
- 6 existing species recovery plans and state and federal goals with
- 7 respect to doubling salmon populations.
- 8 (d) The Delta Plan shall include measures to promote a more
- 9 reliable water supply that address all of the following:
- 10 (1) Meeting the needs for reasonable and beneficial uses of
- 11 water.
- 12 (2) Sustaining the economic vitality of the state.
- 13 (3) Improving water quality to protect human health and the
- 14 environment.
- 15 (e) The following subgoals and strategies for restoring a healthy
- 16 ecosystem shall be included in the Delta Plan:
- 17 (1) Restore large areas of interconnected habitats within the
- 18 Delta and its watershed by 2100.
- 19 (2) Establish migratory corridors for fish, birds, and other
- 20 animals along selected Delta river channels.
- 21 (3) Promote self-sustaining, diverse populations of native and
- 22 valued species by reducing the risk of take and harm from invasive
- 23 species.
- 24 (4) Restore Delta flows and channels to support a healthy estuary
- 25 and other ecosystems.
- 26 (5) Improve water quality to meet drinking water, agriculture,
- 27 and ecosystem long-term goals.
- 28 (6) Restore habitat necessary to avoid a net loss of migratory
- 29 bird habitat and, where feasible, increase migratory bird habitat
- 30 to promote viable populations of migratory birds.
- 31 (f) The council shall consider, for incorporation into the Delta
- 32 Plan, actions designed to implement the subgoals and strategies
- 33 described in subdivision (e).
- 34 (g) In carrying out this section, the council shall make use of
- 35 the best available science.
- 36 (h) The Delta Plan shall include recommendations regarding
- 37 state agency management of lands in the Delta.
- 38 85303. The Delta Plan shall promote statewide water
- 39 conservation, water use efficiency, and sustainable use of water.

1 85304. The Delta Plan shall promote options for new and
2 improved infrastructure relating to the water conveyance in the
3 Delta, storage systems, and for the operation of both to achieve
4 the coequal goals.

5 85305. (a) The Delta Plan shall attempt to reduce risks to
6 people, property, and state interests in the Delta by promoting
7 effective emergency preparedness, appropriate land uses, and
8 strategic levee investments.

9 (b) The council may incorporate into the Delta Plan the
10 emergency preparedness and response strategies for the Delta
11 developed by the California Emergency Management Agency
12 pursuant to Section 12994.5.

13 85306. The council, in consultation with the Central Valley
14 Flood Protection Board, shall recommend in the Delta Plan
15 priorities for state investments in levee operation, maintenance,
16 and improvements in the Delta, including both levees that are a
17 part of the State Plan of Flood Control and nonproject levees.

18 85307. (a) The Delta Plan may identify actions to be taken
19 outside of the Delta, if those actions are determined to significantly
20 reduce flood risks in the Delta.

21 (b) The Delta Plan may include local plans of flood protection.

22 (c) The council, in consultation with the Department of
23 Transportation, may address in the Delta Plan the effects of climate
24 change and sea level rise on the three state highways that cross the
25 Delta.

26 (d) The council, in consultation with the State Energy Resources
27 Conservation and Development Commission and the Public
28 Utilities Commission, may incorporate into the Delta Plan
29 additional actions to address the needs of Delta energy
30 development, energy storage, and energy distribution.

31 85308. The Delta Plan shall meet all of the following
32 requirements:

33 (a) Be based on the best available scientific information and the
34 independent science advice provided by the Delta Independent
35 Science Board.

36 (b) Include quantified or otherwise measurable targets associated
37 with achieving the objectives of the Delta Plan.

38 (c) Where appropriate, utilize monitoring, data collection, and
39 analysis of actions sufficient to determine progress toward meeting
40 the quantified targets.

(d) Describe the methods by which the council shall measure progress toward achieving the coequal goals.

(e) Where appropriate, recommend integration of scientific and monitoring results into ongoing Delta water management.

(f) Include a science-based, transparent, and formal adaptive management strategy for ongoing ecosystem restoration and water management decisions.

85309. The department, 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, the department shall consider all related actions set forth in the Strategic Plan.

CHAPTER 2. BAY DELTA CONSERVATION PLAN

85320. (a) The Bay Delta Conservation Plan (BDCP) shall be considered for inclusion in the Delta Plan in accordance with this chapter.

(b) The BDCP shall not be incorporated into the Delta Plan and the public benefits associated with the BDCP shall not be eligible for state funding, unless the BDCP does all of the following:

(1) Complies with Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code.

(2) Complies with Division 13 (commencing with Section 21000) of the Public Resources Code, including a comprehensive review and analysis of all of the following:

(A) A reasonable range of flow criteria, rates of diversion, and other operational criteria required to satisfy the criteria for approval of a natural community conservation plan as provided in subdivision (a) of Section 2820 of the Fish and Game Code, and other operational requirements and flows necessary for recovering the Delta ecosystem and restoring fisheries under a reasonable range of hydrologic conditions, which will identify the remaining water available for export and other beneficial uses.

(B) A reasonable range of Delta conveyance alternatives, including through-Delta, dual conveyance, and isolated conveyance

1 alternatives and including further capacity and design options of
2 a lined canal, an unlined canal, and pipelines.

3 (C) The potential effects of climate change, possible sea level
4 rise up to 55 inches, and possible changes in total precipitation
5 and runoff patterns on the conveyance alternatives and habitat
6 restoration activities considered in the environmental impact report.

7 (D) The potential effects on migratory fish and aquatic resources.

8 (E) The potential effects on Sacramento River and San Joaquin
9 River flood management.

10 (F) The resilience and recovery of Delta conveyance alternatives
11 in the event of catastrophic loss caused by earthquake or flood or
12 other natural disaster.

13 (G) The potential effects of each Delta conveyance alternative
14 on Delta water quality.

15 (c) The department shall consult with the council and the Delta
16 Independent Science Board during the development of the BDCP.
17 The council shall be a responsible agency in the development of
18 the environmental impact report. The Delta Independent Science
19 Board shall review the draft environmental impact report and
20 submit its comments to the council and the Department of Fish
21 and Game.

22 (d) If the Department of Fish and Game approves the BDCP as
23 a natural community conservation plan pursuant to Chapter 10
24 (commencing with Section 2800) of Division 3 of the Fish and
25 Game Code, the council shall have at least one public hearing
26 concerning the incorporation of the BDCP into the Delta Plan.

27 (e) If the Department of Fish and Game approves the BDCP as
28 a natural community conservation plan pursuant to Chapter 10
29 (commencing with Section 2800) of Division 3 of the Fish and
30 Game Code and determines that the BDCP meets the requirements
31 of this section, and the BDCP has been approved as a habitat
32 conservation plan pursuant to the federal Endangered Species Act
33 (16 U.S.C. Section 1531 et seq.), the council shall incorporate the
34 BDCP into the Delta Plan. The Department of Fish and Game's
35 determination that the BDCP has met the requirements of this
36 section may be appealed to the council.

37 (f) The department, in coordination with the Department of Fish
38 and Game, or any successor agencies charged with BDCP
39 implementation, shall report to the council on the implementation

1 of the BDCP at least once a year, including the status of monitoring
2 programs and adaptive management.

3 (g) The council may make recommendations to BDCP
4 implementing agencies regarding the implementation of the BDCP.
5 BDCP implementing agencies shall consult with the council on
6 these recommendations. These recommendations shall not change
7 the terms and conditions of the permits issued by state and federal
8 regulatory agencies.

9 85321. The BDCP shall include a transparent, real-time
10 operational decisionmaking process in which fishery agencies
11 ensure that applicable biological performance measures are
12 achieved in a timely manner with respect to water system
13 operations.

14 85322. This chapter does not amend, or create any additional
15 legal obligation or cause of action under, Chapter 10 (commencing
16 with Section 2800) of Division 3 of the Fish and Game Code or
17 Division 13 (commencing with Section 21000) of the Public
18 Resources Code.

19
20 CHAPTER 3. OTHER PLANS FOR THE DELTA
21

22 85350. The council may incorporate other completed plans
23 related to the Delta into the Delta Plan to the extent that the other
24 plans promote the coequal goals.

25 SEC. 77. (a) Pursuant to Section 75026 of the Public Resources
26 Code, the sum of twenty-eight million dollars (\$28,000,000) is
27 hereby appropriated to the Department of Water Resources for
28 expenditure by that department pursuant to paragraph (12) of
29 subdivision (a) of Section 75027 of the Public Resources Code for
30 the Two-Gates Fish Protection Demonstration Program managed
31 by the United States Bureau of Reclamation. The Department of
32 Water Resources shall expend such funds only consistent with the
33 requirements of Sections 75026 and 75027 of the Public Resources
34 Code.

35 (b) It is the intent of the Legislature to finance the activities of
36 the Delta Stewardship Council and the Sacramento-San Joaquin
37 Delta Conservancy from funds made available pursuant to the
38 Disaster Preparedness and Flood Prevention Bond Act of 2006
39 (Chapter 1.699 (commencing with Section 5096.800) of Division
40 5 of the Public Resources Code) and the Safe Drinking Water,

Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Division 43 (commencing with Section 75001) of the Public Resources Code).

SEC. 78. Item 3940-001-0439 of Section 2.00 of the Budget Act of 2009 is amended to read:

3940-001-0439—For support of State Water Resources Control

Board.....		238,113,000
------------	--	-------------

Schedule:

(1) 10-Water Quality.....		439,650,000
---------------------------	--	-------------

(2) 20-Water Rights.....		11,658,000
--------------------------	--	------------

		15,408,000
--	--	------------

(3) 30.01-Administration.....		20,886,000
-------------------------------	--	------------

		21,059,000
--	--	------------

(4) 30.02-Distributed Administration.....		-20,886,000
---	--	-------------

		-21,059,000
--	--	-------------

(5) Reimbursements.....		-8,932,000
-------------------------	--	------------

(6) Amount payable from the General Fund (Item 3940-001-0001).....		-40,575,000
--	--	-------------

(7) Amount payable from the Unified Program Account (Item 3940-001-0028)....		-621,000
--	--	----------

(8) Amount payable from the Waste Discharge Permit Fund (Item 3940-001-0193).....		-78,768,000
---	--	-------------

(9) Amount payable from the Marine Invasive Species Control Fund (Item 3940-001-0212).....		-103,000
--	--	----------

(10) Amount payable from the Public Resources Account, Cigarette and Tobacco Products Surtax Fund (Item 3940-001-0235).....		-2,039,000
---	--	------------

(11) Amount payable from the Integrated Waste Management Account, Integrated Waste Management Fund (Item 3940-001-0387).....		-6,757,000
--	--	------------

(12) Amount payable from the Water Recycling Subaccount (Item 3940-001-0419).....		-1,150,000
---	--	------------

		-1,150,000
--	--	------------

		-6,757,000
--	--	------------

		-1,150,000
--	--	------------

		-1,150,000
--	--	------------

1	(13) Amount payable from the Drainage	
2	Management Subaccount (Item 3940-	
3	001-0422).....	-515,000
4	(14) Amount payable from the Seawater In-	
5	trusion Control Subaccount (Item 3940-	
6	001-0424).....	-222,000
7	(15) Amount payable from the Underground	
8	Storage Tank Tester Account (Item	
9	3940-001-0436).....	-64,000
10	(16) Amount payable from the 1984 State	
11	Clean Water Bond Fund (Item 3940-	
12	001-0740).....	-322,000
13	(17) Amount payable from the Federal	
14	Trust Fund (Item 3940-001-0890).....	-51,353,000
15	(18) Amount payable from the Water	
16	Rights Fund (Item 3940-001-3058)....	-7,447,000
17		-11,197,000
18	(19) Amount payable from the Watershed	
19	Protection Subaccount (Item 3940-001-	
20	6013).....	-250,000
21	(20) Amount payable from the Santa Ana	
22	River Watershed Subaccount (Item	
23	3940-001-6016).....	-250,000
24	(21) Amount payable from the Lake Elsinore	
25	and San Jacinto Watershed Subaccount	
26	(Item 3940-001-6017).....	-150,000
27	(22) Amount payable from the Nonpoint	
28	Source Pollution Control Subaccount	
29	(Item 3940-001-6019).....	-200,000
30	(23) Amount payable from the State Revolv-	
31	ing Fund Loan Subaccount (Item 3940-	
32	001-6020).....	-81,000
33	(24) Amount payable from the Wastewater	
34	Construction Grant Subaccount (Item	
35	3940-001-6021).....	-23,000
36	(25) Amount payable from the Coastal	
37	Nonpoint Source Control Subaccount	
38	(Item 3940-001-6022).....	-150,000

- (26) Amount payable from the Water Security, Clean Drinking Water, Coastal and Beach Protection Fund of 2002 (Item 3940-001-6031)..... -3,000,000
- (27) Amount payable from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Fund of 2006 (Item 3940-001-6051)..... -4,073,000
- (28) Amount payable from the Petroleum Underground Storage Tank Financing Account (Item 3940-001-8026)..... -618,000
- (29) Amount payable from the State Water Pollution Control Revolving Fund Administration Fund (Item 3940-001-9739)..... -5,532,000

Provisions:

1. Notwithstanding any other provision of law, upon approval and order of the Director of Finance, the State Water Resources Control Board may borrow sufficient funds for cash purposes from special funds that otherwise provide support for the board. Any such loans are to be repaid with interest at the rate earned in the Pooled Money Investment Account.
2. *Of the amount contained in Schedule (2), \$3,750,000 shall be used to fund 25.0 permanent positions in support of water rights enforcement.*

SEC. 79. Item 3940-001-3058 of Section 2.00 of the Budget Act of 2009 is amended to read:

3940-001-3058—For support of State Water Resources Control Board, for payment to Item 3940-001-0439, payable from the Water Rights Fund..... 7,447,000
11,197,000

Provisions:

1. *The increase in appropriation in this item shall be paid only from the fee revenue in the Water Rights Fund.*

1 SEC. 80. Commencing with the 2010–11 fiscal year, and
2 notwithstanding Section 13340 of the Government Code, three
3 million seven hundred fifty thousand dollars (\$3,750,000) is hereby
4 continuously appropriated, without regard to fiscal years, on an
5 annual basis, only from the fee revenue in the Water Rights Fund
6 to the State Water Resources Control Board for the purposes of
7 funding 25.0 permanent water right enforcement positions, as
8 provided in Schedule (2) of Item 3940-001-0439 of Section 2.00
9 of the Budget Act of 2009, as amended by this act.

10 SEC. 81. If the Commission on State Mandates determines
11 that this act contains costs mandated by the state, reimbursement
12 to local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.

O