

AMENDED IN SENATE MARCH 31, 2009

SENATE BILL

No. 207

Introduced by Senator Florez

February 23, 2009

~~An act to add Chapter 2.10 (commencing with Section 35575) to Part 5 of Division 13 of the Water Code, relating to the Westlands Water District. An act to add Article 7 (commencing with Section 1225) to Chapter 3 of Division 2 of the Fish and Game Code, relating to the Delta smelt, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 207, as amended, Florez. ~~Westlands Water District: electricity generation and delivery. Delta smelt.~~

Existing law requires the Fish and Game Commission to establish fish hatcheries for the purposes of stocking the waters of California with fish, and requires the Department of Fish and Game to maintain and operate those hatcheries.

This bill would enact the Delta Smelt Preservation and Restoration Act of 2009. The act would require the department to develop a Delta smelt hatchery program to preserve and restore the Delta smelt. The program would operate as a mitigation bank that provides take authorizations to banking partners and obtains funding from banking agreements. The bill would transfer an unspecified amount of funds from an unspecified source which would be continuously appropriated to the department for purposes of the act.

~~Existing law, the California Water District Law, specifies the powers and purposes of a California water district. The district law authorizes a California water district to construct, maintain, and operate plants for the generation of hydroelectric power. The district law authorizes a~~

California water district to use the power generated from the hydroelectric plant for its own purposes, or for the production or transmission of water, but prohibits a district from offering the electricity for sale directly to customers, other than a public utility or public agency, for any use other than the production or transmission of water.

~~This bill would authorize the Westlands Water District, a California water district, to generate, provide, sell, and deliver electricity, and to construct, own, lease, operate, contract for, and maintain any works, facilities, improvements, or property necessary or convenient for that generation and delivery. The district would be generally required to use the electricity generated by the district for the development, conveyance, and delivery of surface water and groundwater supplies or to implement programs to address subsurface drainage within the district's boundaries. The bill would authorize the district to sell, dispose of, or distribute electricity to others, as specified, only if the district does not require the use of all electricity generated by the district.~~

~~The bill would make legislative findings and declarations regarding the need for special legislation.~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

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

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *The Delta smelt (*Hypomesus transpacificus*) is a small fish*
4 *native to the Sacramento-San Joaquin Delta. The Delta smelt is a*
5 *particularly vulnerable species in the Delta, with a typical lifespan*
6 *of a single year. It has an unusually low fecundity for a fish with*
7 *a limited planktonic larvae diet. It resides primarily within the*
8 *interface between the salt and fresh water.*

9 (b) *In 1993, the Delta smelt was listed as threatened and has*
10 *henceforth been protected under state law pursuant to the*
11 *California Endangered Species Act (Chapter 1.5 (commencing*
12 *with Section 2050) of Division 3 of the Fish and Game Code).*

13 (c) *There are many known threats to the smelt in the Delta. Loss*
14 *of habitat, reduced food supply, invasive species, rising*
15 *temperatures, and toxic contaminants have all been identified as*
16 *playing a potential role in the decline of Delta smelt.*

1 (d) It is critical to move forward with the appropriate
2 comprehensive strategy for a sustainable Delta that includes the
3 investments necessary to allow the Delta smelt and other sensitive
4 species to survive and thrive in their native habitat. This goal must
5 be accomplished in a manner that will also provide sufficient and
6 reliable water supplies to meet the public health and safety needs
7 of Californians throughout the state and support California’s vital
8 economic interests.

9 (e) A long-term comprehensive solution is vital to addressing
10 the myriad of issues affecting ecosystem health and species
11 recovery. However, immediate action is needed to address the
12 critical condition of the Delta smelt population. A Delta smelt
13 hatchery is a single element in what should constitute a suite of
14 actions aimed at improving habitat conditions and species
15 recovery. A Delta smelt hatchery can provide near-term benefits
16 to ensure the survival of this key Delta species.

17 SEC. 2. Article 7 (commencing with Section 1225) is added to
18 Chapter 3 of Division 2 of the Fish and Game Code, to read:

19
20 Article 7. Delta Smelt Preservation and Restoration Act

21
22 1225. This article shall be known, and may be cited, as the
23 Delta Smelt Preservation and Restoration Act of 2009.

24 1226. As used in this article:

25 (a) “Banking partner” means any state, federal, or local public
26 agency, or person, that enters into a written agreement with the
27 department to participate in the Delta Smelt Hatchery Program.

28 (b) “Delta” means the Sacramento-San Joaquin Delta as
29 described in Section 12220 of the Water Code.

30 (c) “Delta smelt” means the Delta smelt (*Hypomesus*
31 *transpacificus*), of the family *Osmeridae*.

32 (d) “Mitigation bank” means a publicly or privately owned and
33 operated fish hatchery in which Delta smelt are spawned and
34 reared for the purpose of creating refugia populations or for
35 release into the delta to increase the population of Delta smelt in
36 the delta or for use as stock for scientific studies, and which is
37 constructed consistent with this article to mitigate the adverse
38 impacts on Delta smelt populations caused by the activities of
39 banking partners.

1 (e) “Mitigation banking agreement” means a written agreement
2 between the department and a banking partner that satisfies the
3 incidental take requirements of subdivision (b) of Section 2081
4 and that provides a uniform procedure and contribution from each
5 banking partner for receiving mitigation bank credits.

6 (f) “Program” means the Delta Smelt Hatchery Program
7 developed by the department pursuant to Section 1227.

8 (g) “Refugia” means a captive Delta smelt broodstock
9 population managed to maintain a genetic population
10 representative of the wild population.

11 1227. The department shall develop the Delta Smelt Hatchery
12 Program to preserve and restore the Delta smelt. The program
13 shall be implemented by January 1, 2010, and shall do all of the
14 following:

15 (a) Design a propagation facility for the following intended
16 purposes:

17 (1) Establishing a genetic refugia population.

18 (2) Developing broodstock for scientific and educational
19 purposes.

20 (3) Providing a source of fish for supplementation of wild
21 populations.

22 (b) Identify three potential sites within, or immediately adjacent
23 to, the delta that are suitable for the design, construction, and
24 operation of a Delta smelt hatchery.

25 (c) Result in the design and construction of at least one Delta
26 smelt hatchery on a site identified under subdivision (b) by January
27 1, 2011.

28 (d) Develop a Hatchery Management Plan that identifies
29 hatchery management and implementation strategies to ensure
30 the success of the program in meeting its goals. The Hatchery
31 Management Plan shall be developed in consultation with the
32 University of California and the United States Fish and Wildlife
33 Service, and other mediums for scientific peer review, as deemed
34 appropriate by the department.

35 (e) Establish and operate a mitigation bank available to banking
36 partners in order to provide take authorization pursuant to Section
37 2081 to participating banking partners.

38 (f) Adopt guidelines that establish the procedures for entering
39 into a mitigation banking agreement, and the cost of participation
40 in the mitigation bank.

1 1228. The department shall enter into mitigation banking
2 agreements with banking partners for the purpose of providing
3 take authorization under Section 2081. Mitigation banking
4 agreements shall meet both of the following requirements:

5 (a) Establish a requirement for the banking partner to
6 participate in the mitigation bank at a level that is roughly
7 proportional to the impact of the banking partner's activity on
8 Delta smelt.

9 (b) Set the financial contribution of the banking partner, together
10 with a method of making financial contributions to the mitigation
11 bank, that provide sufficient certainty that financing is available
12 for that banking partner's share of the annual operations of the
13 Delta smelt hatchery in an amount sufficient to satisfy the
14 mitigation obligation of the banking partner under the permit
15 issued pursuant to Section 1229.

16 1229. If the department enters into a mitigation banking
17 agreement that satisfies all of the requirements of this article, the
18 department shall issue a permit authorizing an incidental take
19 under Section 2081 to participating banking partners.

20 1230. Delta smelt reared for refugia populations, scientific
21 research, and population augmentation shall be counted towards
22 mitigation credits. Hatchery production in excess of the obligations
23 of mitigation banking partners shall create mitigation credits
24 available to meet the obligations of future activities. Banking
25 credits shall be available to banking partners to satisfy mitigation
26 obligations required under the federal Endangered Species Act of
27 1973 (16 U.S.C. Sec. 1531 et seq.), consistent with a mitigation
28 plan approved by the United States Fish and Wildlife Service.

29 1231. Funding necessary for the long-term operation and
30 maintenance of the program and a Delta smelt hatchery shall be
31 provided from revenues received from banking partners. Funds
32 provided through banking agreements shall be dedicated to
33 program implementation and not used for other purposes.

34 1232. Costs for the planning, design, and construction of a
35 Delta smelt hatchery, including purchase of any necessary lands,
36 easements, or rights-of-ways shall be made from funds allocated
37 by Section 1233. An audit of all funds received for the program
38 shall be conducted every three years.

39 1233. The sum of ____ is hereby transferred from ____ to the
40 department for the purposes of implementing this article.

1 *Notwithstanding Section 13340 of the Government Code, the money*
 2 *transferred is hereby continuously appropriated, without regard*
 3 *to fiscal year, to the department to implement this article.*

4 *1234. The department may contract with public agencies*
 5 *outside of state government for the planning, design, construction,*
 6 *and operation of one or more Delta smelt hatcheries.*

7 *1235. The department may partner with the United States Fish*
 8 *and Wildlife Service in establishing and operating a Delta smelt*
 9 *hatchery, if all requirements of this article are complied with.*

10 *1236. The department shall cooperate on the development of*
 11 *long-term comprehensive Delta ecosystem solutions to ensure*
 12 *consistency with this article. A program implemented pursuant to*
 13 *Section 1227 shall be included as one of the actions incorporated*
 14 *into any state-adopted comprehensive Delta ecosystem program.*

15 *1237. Notwithstanding any other sections, this article does not*
 16 *diminish the protections provided to Delta smelt under state law,*
 17 *provide for illegal taking of Delta smelt, or eliminate the*
 18 *requirements for compliance with the California Endangered*
 19 *Species Act (Chapter 1.5 (commencing with Section 2050) of*
 20 *Division 3).*

21 ~~SECTION 1. Chapter 2.10 (commencing with Section 35575)~~
 22 ~~is added to Part 5 of Division 13 of the Water Code, to read:~~

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 24
 25

~~CHAPTER 2.10. WESTLANDS WATER DISTRICT~~

26 ~~35575. For purposes of this chapter, “district” means the~~
 27 ~~Westlands Water District.~~

28 ~~35576. The district may generate, provide, sell, and deliver~~
 29 ~~electricity as provided in this chapter, and may construct, own,~~
 30 ~~lease, operate, contract for, and maintain any and all works,~~
 31 ~~facilities, improvements or property, or portions thereof, necessary~~
 32 ~~or convenient for that generation or delivery or as otherwise~~
 33 ~~necessary or convenient to carry out this chapter.~~

34 ~~35577. Subject to Section 35578, all electricity generated by~~
 35 ~~the district shall be used by the district solely for the development,~~
 36 ~~conveyance, and delivery of surface water and groundwater~~
 37 ~~supplies or to implement programs to address subsurface drainage~~
 38 ~~within the district’s boundaries.~~

39 ~~35578. If the district does not require the use of all of the~~
 40 ~~electricity it generates, the district may do either of the following:~~

1 ~~(a) Sell, dispose of, or distribute surplus electricity for use~~
2 ~~outside of its boundaries by other public agencies for the limited~~
3 ~~purpose of addressing water supply or subsurface drainage in the~~
4 ~~Counties of Fresno, Kings, Madera, or Merced.~~

5 ~~(b) Sell surplus electricity in the wholesale market monitored~~
6 ~~by the California Independent System Operator, or to electrical~~
7 ~~corporations, or local publicly owned electric utilities.~~

8 ~~35579. Except as provided in Section 35578, the district may~~
9 ~~not provide, sell, dispose of, or distribute electricity to any other~~
10 ~~party.~~

11 ~~SEC. 2. The Legislature finds and declares that this act, which~~
12 ~~is applicable only to the Westlands Water District, is necessary~~
13 ~~because of the unique and special electricity requirements in the~~
14 ~~area included in the district. It is, therefore, hereby declared that~~
15 ~~a general law within the meaning of Section 16 of Article IV of~~
16 ~~the California Constitution cannot be made applicable to the district~~
17 ~~and the enactment of this special law is necessary for the public~~
18 ~~good.~~