

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 200

Introduced by Senator Wolk
(Coauthor: Assembly Member Bill Berryhill)

February 8, 2011

~~An act to amend Section 11460 of, to add Sections 11108, 11109, 11110, 11111, 11456, 11457, 11458, and 11915.2 to, and to add Article 9.4 (commencing with Section 11259) to Chapter 2 of Part 3 of Division 6 of, the Water Code, relating to water. An act to add Section 85321.5 to the Water Code, relating to water.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 200, as amended, Wolk. ~~State water facilities: Sacramento-San Joaquin Delta: Delta conveyance facility. Sacramento-San Joaquin Delta: Bay Delta Conservation Plan.~~

Existing law imposes requirements on the Department of Water Resources in connection with the preparation of a Bay Delta Conservation Plan (BDCP).

The Delta Reform Act of 2009 requires the Delta Stewardship Council to consider the BDCP for inclusion in a specified Delta Plan, and authorizes the incorporation of the BDCP into the Delta Plan if the BDCP meets certain requirements.

This bill would require any state agency that is responsible for authorizing or implementing any action in implementation of the BDCP to ensure that the action is consistent with specified requirements prescribed by the bill. The bill would make related legislative findings and declarations.

~~(1) The United States Bureau of Reclamation operates the federal Central Valley Project and the Department of Water Resources operates~~

~~the State Water Resources Development System, known as the State Water Project, to supply water to persons and entities in the state.~~

~~Existing law provides for the design, construction, operation, and maintenance of water development facilities by the state, including the State Water Project. State Water Project facilities include, among others, the facilities that are specified or authorized as part of the state Central Valley Project.~~

~~This bill would prohibit the construction of a new Delta conveyance facility, as defined, unless specified conditions are met, including (A) the adoption of an agreement by the Department of Water Resources and the Department of Fish and Game that specifies the stages of construction of the new Delta conveyance facility and (B) the establishment plans and agreements for the construction of specified water facilities and implementation of specified water programs meeting prescribed conditions as part of the state Central Valley Project. The bill would prohibit the transportation of water for the federal Central Valley Project through state project facilities, with specified exceptions, unless certain conditions are met.~~

~~The bill would require the Department of Water Resources to enter into contracts with specified Delta agencies for purposes of recognizing the right of users to make use of the waters of the Delta and establishing criteria for minimum water quality in the Delta. The bill would require differences between the state and the Delta agencies to be resolved by arbitration if contracts have not been executed by January 1, 2012.~~

~~(2) Existing law prohibits the Department of Water Resources, in the construction and operation of the State Water Project facilities, from depriving a watershed or area in which water originates, of the prior right to the water required to supply the beneficial needs of that area, as specified.~~

~~This bill would require the project to be operated in compliance with specified water quality standards, and would require the department, the Attorney General, and other state agencies to take actions to ensure that the federal Central Valley Project is operated in compliance with those standards.~~

~~The bill would require the department to make an allocation of specified costs of the project to compensate for historic upstream depletion and diversions, and would prohibit specified public agencies from being responsible for those allocated costs. The bill would require the costs of benefits in the Delta resulting from project operations, in~~

excess of detriments caused by the project, to be repaid by beneficiaries, to the extent those costs are allocable.

~~(3) Under existing law, the Department of Fish and Game and the Department of Water Resources are responsible for specified reports pertaining to water development projects and the Sacramento-San Joaquin Delta.~~

~~This bill would authorize the Department of Fish and Game to administer a study to determine the interrelationship between Delta outflow and fish and wildlife resources in the San Francisco Bay System and waste discharges into the San Francisco Bay system.~~

~~The bill would require the Department of Water Resources to study the possible interconnection between the State Water Resources Development System and water supply systems serving the Counties of Alameda, Contra Costa, San Joaquin, and San Mateo, and the City and County of San Francisco. The bill would also authorize the department to participate in an investigation of the need to enlarge Shasta Dam and Reservoir or other existing federal reservoirs.~~

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

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

- 1 SECTION 1. *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (a) *Removing remaining barriers to achievement of the coequal*
- 4 *goals described in Section 85054 of the Water Code remains a*
- 5 *priority for the Legislature and the state.*
- 6 (b) *It is the intent of the Legislature to avoid potential conflicts*
- 7 *in achieving the coequal goals described in Section 85054 of the*
- 8 *Water Code by ensuring that state actions within the*
- 9 *Sacramento-San Joaquin Delta are equitable and do not redirect*
- 10 *negative impacts from one entity or region of the state to another.*
- 11 (c) *The Bay Delta Conservation Plan (BDCP), identified as one*
- 12 *tool that the state is pursuing to meet the coequal goals, is a plan*
- 13 *to provide 50-year permits compliant with the Natural Community*
- 14 *Conservation Planning Act (Chapter 10 (commencing with Section*
- 15 *2800) of Division 3 of the Fish and Game Code) and the federal*
- 16 *Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) for*
- 17 *the State Water Project, the Central Valley Project, and Mirant*
- 18 *Energy Company. The direct beneficiaries of the BDCP are those*

1 that will receive regulatory permits and assurances under the
2 Natural Community Conservation Planning Act and the federal
3 Endangered Species Act of 1973 for actions within the
4 Sacramento-San Joaquin Delta. No other entity within the
5 Sacramento-San Joaquin Delta watershed will be provided
6 regulatory permits or operational assurances through the BDCP.

7 (d) Consistent with the provisions of the Natural Community
8 Conservation Planning Act (Chapter 10 (commencing with Section
9 2800) of Division 3 of the Fish and Game Code), the BDCP is a
10 voluntary program. Responsibility for implementation of the BDCP
11 is the sole responsibility of the entities that choose to agree to the
12 terms of the permits resulting from the BDCP process.
13 Responsibility for implementation of BDCP conservation measures
14 by parties that have not chosen to participate in the program is
15 not consistent with the Natural Community Conservation Planning
16 Act or legally justifiable.

17 (e) It is the intent of the Legislature to ensure that secured,
18 equitable funding to meet the coequal goals described in Section
19 85054 of the Water Code is available, that funding complies with
20 the beneficiary pays principle, and that actions to achieve the
21 coequal goals are affordable for ratepayers and the public.

22 SEC. 2. Section 85321.5 is added to the Water Code, to read:

23 85321.5. (a) Prior to authorizing or taking any action to
24 implement a conservation measure within the Bay Delta
25 Conservation Plan, any state agency that is responsible for
26 authorizing or implementing that action shall ensure that the action
27 is consistent with all of the following requirements:

28 (1) The action shall not result in significant unmitigated negative
29 impacts to another entity or region. For purposes of this
30 paragraph, "negative impacts" include, but are not limited to,
31 any impact that would negatively affect the water right, water
32 supply, water quality, ecosystem function, flood risk, agricultural
33 resources, infrastructure, regulatory responsibility, or the economy
34 of another entity or region without appropriate full mitigation.

35 (2) The action shall have a viable funding source for the entire
36 period proposed for the implementation of the action. The funding
37 source shall be affordable for the ratepayers and contractors
38 supplying the funding, and shall be reasonably likely to be provided
39 by those ratepayers and contractors through secured funding
40 mechanisms.

1 (3) *Funding for the action shall be consistent with the*
2 *beneficiary pays principle. For purposes of this paragraph,*
3 *“beneficiary pays principle” means that only those identified as*
4 *beneficiaries of the Bay Delta Conservation Plan shall be*
5 *responsible for providing funding for the Bay Delta Conservation*
6 *Plan.*

7 (4) *The action shall be consistent with protecting and*
8 *maintaining public trust resources in the Delta. The action shall*
9 *be consistent with maintaining flows within the Delta and outflows*
10 *from the Delta that are necessary to maintain the public trust*
11 *resources of the Delta, the Suisun Marsh, and the San Francisco*
12 *Bay. Any action that results in reduced flow within the Delta or*
13 *outflow from the Delta shall be scientifically justified and*
14 *consistent with maintaining the existing statewide water rights*
15 *priority system, area of origin protections, and beneficial uses of*
16 *water within the Delta.*

17 (5) *If the action requires additional waterflows in order to*
18 *mitigate for the action or meet conditions of a permit under the*
19 *Bay Delta Conservation Plan, the beneficiaries of the Bay Delta*
20 *Conservation Plan or the action shall be solely responsible for*
21 *identifying, developing, funding, and supplying those waterflows.*
22 *No other water rights holder or legal user of water shall be*
23 *responsible for supplying flows that may be necessary to permit*
24 *or mitigate for actions taken to comply with the Bay Delta*
25 *Conservation Plan, except for those water rights holders and*
26 *parties that are beneficiaries of the Bay Delta Conservation Plan.*

27 (6) *The action shall be developed and implemented with the*
28 *input of all affected local governments and the public.*

29 (7) *The action shall be implemented consistent with existing*
30 *efforts to manage wildlife within the Delta, Suisun Marsh, and the*
31 *San Francisco Bay, including adopted plans for management of*
32 *the Yolo Wildlife Area, the Suisun Marsh Conservation District,*
33 *the San Francisco Bay Plan, and the federal Migratory Bird Treaty*
34 *Act (16 U.S.C. Sec.703 et seq.), and applicable local natural*
35 *community conservation plans.*

36 (8) *The action shall not violate any legal contract to maintain*
37 *water quality within the Delta, including but not limited to, the*
38 *contract between the department and the North Delta Water*
39 *Agency, dated January 28, 1981, and the contract between the*
40 *department and the City of Antioch, dated April 11, 1968.*

1 (b) Nothing in this section supersedes, reduces, or otherwise
2 affects existing legal protections, both procedural and substantive,
3 relating to the state board's regulation of diversion and use of
4 water, including, but not limited to, water right priorities, the
5 protection provided to municipal interests by Sections 106 and
6 106.5, and changes in water rights. Nothing in this section expands
7 or otherwise alters the board's existing authority to regulate the
8 diversion and use of water or the courts' existing concurrent
9 jurisdiction over California water rights.

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Senate, February 8, 2011. (JR11)**