

SB X7 1 (Steinberg) – October 23, 2009
Delta & Water Reform Legislation
SUMMARY: California Delta Governance & Planning

SUMMARY: Reforms policy and governance for the Sacramento-San Joaquin Delta (Delta). [Sections 3-39, 72, 73] Specifically, the proposed agreement for Delta governance:

- 1) Reconstitutes and redefines role of the Delta Protection Commission (DPC), to narrow membership to focus on local representation, and to expand DPC role in economic sustainability and advising the Delta Council.
 - a) Requires DPC to create a regional economic sustainability plan, including creation of a Delta Investment Fund in the State Treasury.
 - b) Requires DPC to submit recommendations regarding potential expansion of or change to the Delta's primary zone to the Legislature.
 - c) Requires the Delta Council to consider DPC recommendations and adopt such recommendations, if in the Council's discretion they are feasible and consistent with the Delta Plan objectives.
- 2) Creates a new Sacramento-San Joaquin Delta Conservancy (Conservancy), to support efforts that advance environmental protection and the economic well-being of Delta residents.
 - a) Establishes and limits the Conservancy's powers and duties, to focus its efforts on collaborative projects in the Delta and Suisun Marsh.
 - b) Requires the Conservancy to develop a strategic plan consistent with the Delta Plan and other applicable regional plans affecting the Delta or Suisun Marsh
 - c) Establishes the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury.
- 3) Repeals the California Bay-Delta Authority Act.
- 4) Establishes new legal framework for Delta management, emphasizing the coequal goals of "providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem" as foundation for state decisions as to Delta management.
 - a) Sets state policy and objectives for management of the Delta.
 - b) Defines several important new legal terms related to managing the Delta, including "co-equal goals," adaptive management, ecosystem restoration, new Delta governance entities, and "covered actions" that are subject to appeal to the Delta Council for a determination of consistency with the Delta Plan.

- c) Preserves existing law – explicitly – relating to several legal issues, including:
 - i) statutory protection for area-of-origin
 - ii) specified statutes establishing environmental protection regulatory processes
 - iii) water rights, including procedural and substantive protections for water right holders, such as the domestic use preference
 - iv) scope of SWRCB authority and judicial jurisdiction to regulate water rights
 - v) state liability for flood protection in the Delta or its watershed
- 5) Requires the Delta Stewardship Council, Department of Water Resources (DWR) or Department of Fish & Game (DFG) to take certain "early actions," including certain Delta ecosystem restoration projects such as "Two-Gates Fish Protection Demonstration Project."
- 6) Requires State Water Resources Control Board (SWRCB) to develop new flow criteria for the Delta ecosystem necessary to protect public trust resources, to inform planning decisions in the Delta Plan and the Bay Delta Conservation Plan.
 - a) Specifies informational process for developing new flow criteria, pursuant to SWRCB regulations, that includes opportunity for all interested persons to participate.
 - b) Requires order approving moving the point of diversion for the State Water Project (SWP) and the federal Central Valley Project (CVP) to the Sacramento River to include "appropriate" Delta flow criteria.
 - c) Requires SWP/CVP water contractors to pay costs of flow criteria analysis.
- 7) Creates Delta Stewardship Council (Council) as an independent state agency.
 - a) Establishes 7-member Council, with four appointments by the Governor, two by the Legislature, and the chair of the Delta Protection Commission, with staggered terms.
 - b) Specifies authority of Council, including appeals of state/local agency determinations of consistency with Delta Plan, with specified exemptions.
- 8) Creates Delta Watermaster as enforcement officer for SWRCB in the Delta.
- 9) Creates Delta Independent Science Board (Science Board) and Delta Science Program.
- 10) Requires Council to develop, adopt, and commence implementation of the "Delta Plan" by January 1, 2012, with a report to the Legislature by March 31, 2012.
 - a) Requires Delta Protection Commission (DPC) to develop proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place.
 - b) Requires Delta Plan to further the coequal goals of Delta ecosystem restoration and a reliable water supply.

- 11) Requires Delta Plan to promote statewide water conservation, water use efficiency, and sustainable use of water, as well as improvements to water conveyance/storage and operation of both to achieve the coequal goals.
- 12) Requires Delta Plan to attempt to reduce risks to people, property, and state interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and strategic levee investments.
- 13) Requires Council to consider including the Bay Delta Conservation Plan (BDCP) under certain circumstances, including:
 - a) Conditions BDCP incorporation into Delta Plan and state funding for BDCP public benefits on compliance with the Natural Community Conservation Planning (NCCP) Act and California Environmental Quality Act (CEQA).
 - b) Requires certain analyses as part of CEQA compliance for BDCP:
 - c) Requires DWR to consult with Council and Science Board during development of BDCP.
 - d) Requires BDCP to include transparent, real-time operational decisionmaking process in which fishery agencies ensure applicable biological performance measures are achieved in a timely manner.
- 14) Appropriates \$28 million for the "Two-Gates Fish Protection Demonstration Program."

EXISTING LAW establishes more than 200 state and local agencies with responsibilities and authority in the Delta, including SWRCB, DPC, DWR, DFG, and the California Bay-Delta Authority.

COMMENTS: Since the Assembly Water, Parks and Wildlife (WP&W) Committee considered the Delta governance and planning provisions, as part of SB 68 (the regular session version of this bill), on September 11, this portion of the 2009 Delta/Water legislative package has changed in limited ways, to address certain concerns.

- **Governor's Council Appointments:** SB X7 1 removes the staggering of the Governor's initial appointments to the Delta Stewardship Council. Instead of staggering the Governor's first appointments by 1-4 years, two initial gubernatorial appointees will have 4-year terms and two will have 6-year terms. After those initial appointments both gubernatorial and legislative appointees to the Council will have 4-year terms.
- **Delta Water Quality:** SB X7 1 amended SB 68's original findings and state policies to incorporate water quality concerns for human health and the environment.
- **Savings Clauses:** SB X7 1 expanded the provisions that preserve legal protections in existing law, to assure that water rights are respected and water right holders receive the procedural and substantive protections of existing law.
- **"Covered Actions" Exemptions/Grandfather Clause:** The definition of "covered actions" sets the scope of what agency actions may be appealed to the Council as inconsistent with the Delta Plan. SB X7 1 adds exemptions to the definition to exclude: 1) regional transportation plans; 2) local plans or projects that comply with Government Code provisions for sustainable communities; 3) routine maintenance and operation of local government facilities in the Delta; 4) local agency projects that are either "fully permitted" or have completed the CEQA process by September 30, 2009.

- **Flow Criteria:** SB X7 1 – like SB 68 – requires SWRCB to exercise its public trust authority to develop new "flow criteria" to inform planning decisions for the Delta Plan. These "flow criteria" are an important new creation of this bill, *not* based on existing state or federal law. (State law requires "objectives," while federal law requires "criteria" but not related to flow.) In essence, development of these flow criteria will ask – at the front end of Delta planning and not at the back end of SWRCB permit decisions – what water the Delta needs. SB X7 1 amendments accomplished two things: 1) Focused this effort on informing planning decisions for the Delta Plan and the Bay Delta Conservation Plan; and 2) specified the procedure for SWRCB to develop the flow criteria, relying on an "informational proceeding," not a regulatory proceeding.
- **Watermaster Authority:** SB X7 1 specifies the scope of the Delta Watermaster's authority as applying to diversions in the Delta and board requirements that apply to conditions in the Delta. This further specification is consistent with the original definition of the "Delta Watermaster." It ensures that the Watermaster has authority over both in-Delta water diversions and water project operations outside the Delta where SWRCB has conditioned the water right permits based on conditions in the Delta. The CVP permits for New Melones Reservoir, for example, are conditioned on compliance with certain Delta water quality requirements, leading to reservoir releases to dilute salinity coming downstream on the San Joaquin River.

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