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AMENDMENTS TO SENATE BILL NO. 68
AS AMENDED IN ASSEMBLY SEPTEMBER 4, 2009

Amendment 1

In line 1 of the heading, strike out “Committee on Budget and Fiscal Review”
and insert:

Senator Steinberg

Amendment 2

Below line 1 of the heading, insert:

(Principal coauthors: Senators Florez, Padilla, Pavley, and Simitian)

Amendment 3

Strike out lines 1 to 3, inclusive, of the title, and insert:

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, and to amend Sections 1052, 1055, 1055.2, 1120, 1525, 1535, 1538, 1551, 1825, 1831, 1845, 2525, 2526, 2550, 2763.5, and 5106 of, to amend and repeal Section 10631.5 of, to add Sections 1051.1, 1055.5, 1240.5, 1846, and 1847 to, to add Chapter 3.5 (commencing with Section 1110) to Part 1 of Division 2 of, to add Part 2.55 (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 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, relating to water resources, and making an appropriation therefor.

Amendment 4

On page 2, before line 1, insert:

SECTION 1. Section 6103.1 of the Government Code is amended to read:

6103.1. Section 6103 does not apply to any fee or charge for official services required by ~~Parts~~ Part 1 (commencing with Section 1000), Part 2 (commencing with Section 1200), Part 3 (commencing with Section 2000), and Part 4 (commencing with Section 4000), Part 5 (commencing with Section 4999), or Part 5.1 (commencing with Section 5100) of Division 2, Division 7 (commencing with Section 13000), or Division 35 (commencing with Section 85000) of the Water Code.

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

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

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

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

(a) Achieve the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

(a)

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

~~(b) Assure~~

(c) Ensure orderly, balanced conservation and development of delta land resources.

(e)

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

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

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

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

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

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

29722.5. “Delta Plan” means the plan adopted by the Delta Stewardship Council pursuant to Section 85300 of the Water Code.

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

29722.7. “Economic sustainability plan” means the plan adopted by the commission pursuant to Section 29759.

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

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

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

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

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

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

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

29733. “Unincorporated towns” means the communities of Walnut Grove, Clarksburg, Courtland, Hood, Locke, Knightsen, Collinsville, and Ryde.

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

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

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

(b) (1) Three elected city council members shall be selected and appointed by city selection committees, from ~~regional and area councils of government~~ the appropriate regions specified below, one in each of the following areas:

(A) One from the north ~~delta~~ Delta, ~~consisting of~~ from either the Counties County of Yolo and or the County of Sacramento, on a rotating basis.

(B) One from the south ~~delta~~ Delta, consisting of the County of San Joaquin.

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

(2) A city council member may select a designee for purposes of paragraph (1).

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

(c) ~~(1)~~ One member each from the board of directors of ~~five~~ three different reclamation districts that are located within the primary zone who are residents of the ~~delta~~ Delta, and who are elected by the trustees of reclamations districts ~~within the following areas:~~ pursuant to paragraphs (1), (2), and (3). Each reclamation district may nominate one director to be a member. The member from an area shall be selected from among the nominees by a majority vote of the reclamation districts in that area.

The member may select a designee for this purpose. For the purposes of this section, each reclamation district shall have one vote.

~~(A) Two members~~

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

~~(B)~~

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

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

~~(D)~~

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

~~(2) Each reclamation district may nominate one director to be a member. The member from an area shall be selected from among the nominees by a majority vote of the reclamation districts in that area. The member may select a designee for this~~

~~purpose. For purposes of this section, each reclamation district shall have one vote.~~

~~The north delta area shall conduct separate votes to select each of its two members.~~

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

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

~~(f)~~

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

~~(g)~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~29738. The position office of a an appointed member of the commission shall be considered is vacated upon the loss of any qualification required for appointment, and in that event the appointing authority shall appoint a successor within 30 days of the occurrence of the vacancy. Upon the occurrence of the first vacancy among any of the members listed in subdivision (d), (e), (f), (g), (h), or (i) of Section 29735, the Director of Conservation or the director's designee shall serve as the successor member.~~

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

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

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

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

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

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

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

29741. The time and place of the first meeting of the commission after January 1, 2010, shall be prescribed by the Governor, but in no event shall it be scheduled for

a date later than January 31, ~~1993~~ 2010. All meetings after the first meeting shall be held in a city within the ~~delta~~ Delta.

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

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

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

29752. The commission shall adopt its own rules, regulations, and procedures necessary for its organization and operation, and shall conduct its meetings in compliance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

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

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

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

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

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

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

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

29754. The commission shall establish and maintain an office within the ~~delta~~ Delta or the City of Rio Vista, and for this purpose the commission may rent or own property and equipment. Any rule, regulation, procedure, plan, or other record of the commission which is of such a nature as to constitute a public record under state law shall be available for inspection and copying ~~during regular office hours~~ pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

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

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

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

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

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

- (1) Public safety recommendations, such as flood protection recommendations.
- (2) The economic goals, policies, and objectives in local general plans and other local economic efforts, including recommendations on continued socioeconomic sustainability of agriculture and its infrastructure and legacy communities in the Delta.
- (3) Comments and recommendations to the Department of Water Resources concerning its periodic update of the flood management plan for the Delta.
- (4) Identification of ways to encourage recreational investment along the key river corridors, as appropriate.

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

~~29761. The Director of the Office of Planning and Research shall submit comments and recommendations on the resource management plan for the commission's consideration, prior to the 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 in the south Delta, and one 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 management plan or any amendments, changes, or updates, to the resource 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 the general plan consistent with the criteria in Section 29763.5~~ resources management plan with respect to land located within the primary zone.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Rio Vista.
- (b) Isleton.
- (c) Bethel Island.
- (d) Brannan-Andrus Island.
- (e) Cosumnes/Mokelumne floodway.
- (f) The San Joaquin/South Delta lowlands.

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

29778.5. The Delta Investment Fund is hereby created in the State Treasury. Any funds within the Delta Investment Fund shall be available, upon appropriation by the Legislature, to the commission for the implementation of the regional economic sustainability plan, developed pursuant to Section 29759, for the purposes of enhancing

Delta communities. The Delta Investment Fund may receive funds from federal, state, local, and private 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~~ 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.

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

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

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

(e) The Delta and Suisun Marsh provide numerous opportunities for recreation, such as boating, kayaking, fishing, hiking, birding, and hunting. Navigable waterways

in the Delta are available for public access and currently make up the majority of recreational opportunities. There is a need for land-based recreational access points including parks, picnic areas, and campgrounds.

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

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

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

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

- (1) Protect and enhance habitat and habitat restoration.
- (2) Protect and preserve Delta agriculture and working landscapes.
- (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, recreational, scenic, or open-space opportunities, protection of the natural environment, preservation or enhancement of wildlife, preservation of cultural and historical resources, or efforts to provide for the enjoyment of public lands.

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

(h) “Tribal organization” means an Indian tribe, band, nation, or other organized group or community, or a tribal agency authorized by a tribe, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and is identified on pages 52829 to 52835, inclusive, of Number 250 of Volume 53 (December 29, 1988) of the Federal Register, as that list may be updated or amended from time to time.

CHAPTER 3. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY

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

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

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

- (1) Protect and enhance habitat and habitat restoration.
- (2) Protect and preserve Delta agriculture and working landscapes.
- (3) Provide increased opportunities for tourism and recreation in the Delta.
- (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.), 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.

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

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

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

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

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

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

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

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

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

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

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

(9) A designee of the Yolo Basin Foundation.

(10) A designee of the Delta Protection Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

32348. The board shall conduct business in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

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

CHAPTER 5. POWERS, DUTIES, AND LIMITATIONS

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

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

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

(2) Funds may be allocated to a separate program for economic sustainability in the Delta. The conservancy shall develop this program, in conjunction with the Delta Protection Commission and other interested parties. Funds provided to the conservancy to implement the Bay Delta Conservation Plan shall not be used for economic sustainability projects.

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

- (a) The project implements the ecosystem goals of the Delta Plan.
- (b) The project is consistent with the requirements of any applicable state and federal permits.
- (c) The conservancy has given notice to and receives and reviews any comments from affected local jurisdictions and the Delta Protection Commission.
- (d) The conservancy has given notice to and reviewed any comments received from any state conservancy where the project is located.
- (e) The project will provide significant benefits to the Delta.

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

32363. In implementing this division, the conservancy shall cooperate and consult with the city or county in which a grant is proposed to be expended or an interest in real property is proposed to be acquired, and shall, as necessary or appropriate, coordinate its efforts with other state agencies, in cooperation with the Secretary of the Natural Resources Agency. The conservancy shall, as necessary or appropriate,

cooperate and consult with a public water system, levee, flood control, or drainage agency that owns or operates facilities, including lands appurtenant thereto, where a grant is proposed to be expended or an interest in land is proposed to be acquired.

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

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

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

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

(e) The conservancy may require any funds over and above the costs of eligible or approved projects or of acquisition to be returned to the conservancy, to be available for expenditure when appropriated by the Legislature.

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

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

(1) The intended use of the property.

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

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

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

32365. The conservancy may sue and be sued.

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

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

32368. The conservancy may enter into an agreement with a public agency, nonprofit organization, or private entity for the construction, management, or maintenance of facilities authorized by the conservancy.

32370. The conservancy shall not exercise the power of eminent domain.

32372. (a) The conservancy may pursue and accept funds from various sources, including, but not limited to, federal, state, and local funds or grants, private philanthropy, gifts, donations, bequests, devises, subventions, grants, rents, royalties, or other assistance and funds from public and private sources.

(b) The conservancy may accept fees levied by others.

(c) The conservancy may create and manage endowments.

(d) All funds received by the conservancy shall be deposited in the fund for expenditure for the purposes of this division.

32376. Within two years of hiring an executive officer, the board shall prepare and adopt a strategic plan to achieve the goals of the conservancy. The plan shall describe its interaction with local, regional, state, and federal land use, recreation, water and flood management, and habitat conservation and protection efforts within and adjacent to the Delta. The strategic plan shall establish priorities and criteria for projects and programs, based upon an assessment of program requirements, institutional capabilities, and funding needs throughout the Delta. The strategic plan shall be consistent with the Delta Plan, the Delta Protection Commission's resources management plan, the Central Valley Flood Protection Plan, the Suisun Marsh Preservation Act of 1977 (Division 19 (commencing with Section 29000)), and the Habitat Management, Preservation and Restoration Plan for the Suisun Marsh.

32378. (a) The conservancy may expend funds and award grants and loans to facilitate collaborative planning efforts and to develop projects and programs that are designed to further the purposes of this division.

(b) The conservancy may provide and make available technical information, expertise, and other nonfinancial assistance to public agencies, nonprofit organizations, and tribal organizations, to support program and project development and implementation.

32380. The conservancy may acquire water or water rights to support the goals of the conservancy.

32381. This division does not grant to the conservancy any of the following:

(a) The power of a city or county to regulate land use.

(b) The power to regulate any activities on land, except as the owner of an interest in the land, or pursuant to an agreement with, or a license or grant of management authority from, the owner of an interest in the land.

(c) The power over water rights held by others.

SEC. 40. Section 1051.1 is added to the Water Code, to read:

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

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

within that 30-day period, the board may adopt a decision and order after conducting a hearing.

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

(d) In conducting any investigation or proceeding specified in Section 275 or 1051, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, the board may inspect the facilities of any person or entity to ascertain whether the purposes of Section 100 and this division are being met and to ascertain compliance with any permit, license, certification, registration, decision, order or regulation issued under Section 275, this division, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7. Except in the event of an emergency affecting the public health or safety, the inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure.

SEC. 41. Section 1052 of the Water Code is amended to read:

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

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

(e)

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

~~(d)~~

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

(A) One thousand dollars (\$1,000) for each day in which the trespass occurs.

(B) One thousand dollars (\$1,000) for each acre-foot of water diverted or used other than as authorized in this division.

(2) Civil liability may be imposed by the superior court.

The Attorney General, upon request of the board, shall petition the superior court to impose, assess, and recover any sums 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 the corrective action, if any, taken by the violator.

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

~~(e)~~

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

(f)

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

SEC. 42. 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, or 1118, 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 as hearing officer may sit as a member of the board in deciding the matter. The board, after making an independent review of the record and taking any additional evidence as may be necessary that could not reasonably have been offered before the hearing officer, may adopt, with or without revision, the proposed decision and order.~~

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

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

SEC. 43. Section 1055.2 of the Water Code is amended to read:

1055.2. No person or entity shall be subject to both civil liability imposed under Section 1055 and civil liability imposed by the superior court under ~~subdivision (d) of~~ Section 1052, Section ~~1536~~ 1118, ~~or~~ Section 1845, or Section 1846 for the same act or failure to act.

SEC. 44. Section 1055.5 is added to the Water Code, to read:

1055.5. (a) (1) The board shall adjust on an annual basis, by January 1 of each year beginning in 2011, all civil and administrative liabilities or penalties imposed by the board in an action brought at the request of the board pursuant this division, to adjust the maximum amounts specified in this division for inflation, as established by the amount by which the California Consumer Price Index for the month of June of the year prior to the adjustment exceeds the California Consumer Price Index for June of the calendar year in which legislation was last enacted establishing or amending the maximum amount of the liability or penalty.

(2) The amount of any liability or penalty determined pursuant to this subdivision shall be rounded as follows:

(A) To the nearest multiple of ten dollars (\$10) in the case of a liability or penalty that is less than or equal to one hundred dollars (\$100).

(B) To the nearest multiple of one hundred dollars (\$100) in the case of a liability or penalty that is greater than one hundred dollars (\$100), but less than or equal to one thousand dollars (\$1,000).

(C) To the nearest multiple of one thousand dollars (\$1,000) in the case of a liability or penalty that is greater than one thousand dollars (\$1,000) but less than or equal to ten thousand dollars (\$10,000).

(D) To the nearest multiple of five thousand dollars (\$5,000) in the case of a liability or penalty that is greater than ten thousand dollars (\$10,000).

(3) Inflation adjustments made pursuant to this subdivision are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The updated civil and administrative liability or penalties pursuant to the inflation adjustment shall be filed with the Secretary of State and published in the California Code of Regulations.

(b) This section does not apply to any liability imposed under Section 1538.

(c) The board shall report to the Legislature with regard to the implementation of this section.

SEC. 45. Chapter 3.5 (commencing with Section 1110) is added to Part 1 of Division 2 of the Water Code, to read:

CHAPTER 3.5. INTERIM RELIEF

1110. (a) The board may issue an interim relief order in appropriate circumstances, after notice and an opportunity for a hearing, in proceedings to apply or enforce any of the following:

- (1) Section 2 of Article X of the California Constitution.
- (2) The public trust doctrine.

(3) Water quality objectives adopted pursuant to subdivision (b) of Section 13142, Section 13170, or Section 13241.

(4) The requirements set forth in permits, licenses, certificates, and registrations issued pursuant to Part 2 (commencing with Section 1200), including actions that invoke the board's reserved jurisdiction.

(5) Division 1 (commencing with Section 100), this division, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7.

(6) Section 5937 of the Fish and Game Code.

(b) The board may commence an interim relief proceeding on its own motion or upon the petition of any interested party. The board shall not accept any petition that does not include all of the following information:

(1) The name and address of the petitioner.

(2) A description of the specific diversion or use of water that the petitioner is contesting.

(3) A statement of the petitioner's interest in the contested diversion or use of water.

(4) Identification of the proceedings in which interim relief is requested.

(5) A description of the harm or injury complained of.

(6) An explanation of the nexus between the diversion or use and the alleged harm or injury.

(7) A statement of reasons that would justify the relief that the petitioner has requested.

(8) Any additional information that the board may deem appropriate.

(c) The board may dismiss a petition that does not raise substantial issues that are appropriate for review.

(d) Unless the board concludes that consideration of the matter is urgent, the board shall provide notice at least 20 days before the hearing date. In its discretion, the board may provide that the evidence to be considered shall be based on declarations under penalty of perjury, the testimony of witnesses at the hearing, or both. The board shall also consider oral or written legal argument that is provided in a timely manner by the parties. The board may establish a schedule for filing declarations and written arguments.

(e) If the board issues an interim relief order without providing at least 20 days' notice before the hearing date, or if the board issues an interim relief order after considering the declaration of any witness who is not available for cross examination, the interim relief order shall remain in effect for a period not to exceed 180 days unless the party to whom the interim relief order is issued agrees to an extension of that period. This subdivision is not a limitation on the authority of the board to issue any additional interim relief in response to changed circumstances.

(f) In determining whether to provide interim relief, and the nature and extent of the relief, the board shall consider all relevant circumstances, including the effects on other legal users of water, fish, wildlife, and other instream beneficial uses, the extent of harm, the necessity for relief, and any appropriate measure to minimize any adverse effects of providing interim relief. Except where relief is limited to requirements for submission of reports, participation in studies, or environmental documentation, the board shall not order interim relief except upon a showing of both reasonable

probability of success on the merits and that the hardship from denying interim relief outweighs any harm caused by granting interim relief.

1111. (a) As part of the interim relief order, the board may require the water diverter or user to do any of the following:

- (1) Cease all harmful practices.
- (2) Employ specific procedures and operations to prevent or mitigate the harm.
- (3) Complete technical and monitoring work and prepare and submit reports on that work, including draft environmental documentation.
- (4) Participate in and provide funding for studies that the board determines are reasonably necessary to evaluate the impact of the diversion or use that is the subject of the proceeding.
- (5) Reimburse the board's expenses for the preparation of any necessary environmental documentation.
- (6) Take other required action.

(b) The board shall set a schedule for compliance with any interim relief order. If a schedule is not being met, the board may hold a hearing, in accordance with Section 1110, to consider changes or other actions which are appropriate under the circumstances, including, but not limited to, further interim relief or changes in the schedule.

1112. If the board orders interim relief, the board shall set a schedule, as soon as reasonably possible, for the board's consideration of permanent relief. The schedule shall include actions that the water diverter or user is required to undertake to ensure timely consideration of the permanent relief. The actions required of the water diverter

or user may include, but are not limited to, the completion of technical and monitoring work, the preparation and submittal of reports on that work, including draft environmental documentation, and the reimbursement of the board's expenses. If the schedule is not being met, the board may hold a hearing in accordance with Section 1110 to consider changes or other actions as may be appropriate under the circumstances. Any permanent relief shall be granted after notice and an opportunity for a hearing.

1113. (a) Except as otherwise specified in this section, any interim relief order issued by the board is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code if the board makes either of the following findings:

(1) Providing interim relief will not have a significant adverse effect on the environment.

(2) Providing interim relief will result in environmental benefits or prevent harm to environmental resources, and the benefits provided or harm prevented outweighs any adverse risks that may result from providing interim relief. If the board makes a finding pursuant to this paragraph, the board shall also adopt the finding or findings specified in Section 21081 of the Public Resources Code.

(b) Any findings of the board pursuant to this section shall be supported by substantial evidence in the record. If the board makes the findings specified in paragraph (1) of subdivision (a) of Section 21081 of the Public Resources Code, or if the board finds that providing interim relief will not have a significant adverse effect on the environment because any potentially significant adverse effect will be avoided as a

result of mitigation incorporated in the board's order, the board shall adopt a reporting and monitoring program in accordance with Section 21081.6 of the Public Resources Code.

(c) Sections 21167, 21167.1, 21167.4, 21167.5, 21167.6, 21167.7, 21167.8, 21168, 21168.5, 21168.9, and 21177 of the Public Resources Code shall apply to any action or proceeding to attack, review, set aside, void, or annul any action or decision of the board pursuant to this chapter on grounds of noncompliance with this section.

1114. The board may review and revise any part of an interim relief order at any time after notice to all interested parties and an opportunity for hearing.

1115. The issuance or denial of an interim relief order by the board shall not be deemed to alter the burdens of proof or the burdens of coming forward, with respect to the board's final decision on the merits in the proceeding in which interim relief is requested.

1116. This chapter is not a limitation on the jurisdiction of any court or agency over any matter within that court's or agency's jurisdiction.

1117. If any water diverter or user fails to comply with any part of an interim relief order, the Attorney General, upon the request of the board, shall petition the superior court for the issuance of a prohibitory or mandatory injunctive relief, as necessary, through the issuance of a temporary restraining order, preliminary injunction, or permanent injunction.

1118. (a) Any person or entity who violates any interim relief order issued by the board is liable for a civil penalty of not more than five thousand dollars (\$5,000) for each day in which a violation occurs.

(1) Civil liability may be imposed by the superior court. The Attorney General, upon request of the board, shall petition the superior court to impose the liability.

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

(b) In determining the appropriate amount, the court or the board, as the case may be, shall consider all the relevant circumstances, including the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action undertaken by the violator.

(c) Funds derived from civil penalties assessed pursuant to this section shall be deposited in the Water Rights Fund.

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

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

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

1240.5. In any proceeding before the board in which it is alleged that a right to appropriate water has ceased or is subject to forfeiture or revocation for nonuse, there shall be a rebuttable presumption that no use occurred unless that use is included in a statement submitted pursuant to any reporting or monitoring requirement established under any permit, license, certificate, 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 may further adjust the annual fees to compensate for the over or under collection of revenue.

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

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

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

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

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

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

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

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

SEC. 51. Section 1551 of the Water Code is amended to read:

1551. All of the following shall be deposited in the Water Rights Fund:

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

(b) All funds collected under Section 1052,~~1845~~ Section 1118, Article 4 (commencing with Section 1845) of Chapter 12, or Section 5107.

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

SEC. 52. Section 1825 of the Water Code is amended to read:

1825. It is the intent of the Legislature that the state should take vigorous action to enforce the terms and conditions of permits, licenses, certifications, and registrations to appropriate water, to enforce state board orders and decisions,~~and~~ to prevent the unlawful diversion of water, and to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, and to enforce reporting and monitoring requirements.

SEC. 53. Section 1831 of the Water Code is amended to read:

1831. (a) ~~When~~If the board determines that any person is violating, or threatening to violate, any requirement described in subdivision (d), the board may issue an order to that person to cease and desist from that violation.

(b) The cease and desist order shall require that person to comply forthwith or in accordance with a time schedule set by the board.

(c) The board may issue a cease and desist order only after notice and an opportunity for hearing pursuant to Section 1834.

(d) The board may issue a cease and desist order in response to a violation or threatened violation of any of the following:

(1) The prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division.

(2) Any term or condition of a permit, license, certification, or registration issued under this division.

(3) Any decision or order of the board issued under this part, Section 275, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

(4) Any regulation adopted under Section 275 provided that the board shall not issue a cease and desist order for violation of a regulation adopted by the department, other than a regulation jointly adopted by the department and the board, unless enforcement is requested by the department.

(5) Any reporting or monitoring requirement established under any decision, 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.

(e) This article ~~shall~~ does not authorize the board to regulate, in any manner, the diversion or use of water not otherwise subject to regulation ~~of by~~ the board ~~under this part~~.

SEC. 54. Section 1845 of the Water Code is amended to read:

1845. (a) Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the board, shall petition 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 sum of the following:

(A) Two thousand five hundred dollars (\$2,500) for each day in which the violation occurs.

(B) Two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in violation of the cease and desist order.

(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 the corrective action, if any, taken by the violator.

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

SEC. 55. 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 any monitoring device required under that reporting or monitoring requirement shall be liable for a sum not to exceed five hundred dollars (\$500) for each day in which the violation occurs.

(b) 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.

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

(d) 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 the corrective action, if any, taken by the violator.

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

(f) (1) This section applies to any reporting or monitoring requirement established under any permit, license, certificate, 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.

(2) This section also applies to any reporting or monitoring requirement established by the department under Section 275 or 286, if the department requests enforcement pursuant to this section.

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

SEC. 56. Section 1847 is added to the Water Code, to read:

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

(b) 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.

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

(d) 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 the corrective action, if any, taken by the violator.

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

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

SEC. 57. Section 2525 of the Water Code is amended to read:

2525. Upon petition signed by one or more claimants to water of any stream system, requesting the determination of the rights of the various claimants to the water of that stream system, the board shall, if, upon investigation, it finds the facts and conditions are such that the public interest and necessity will be served by a determination of the water rights involved, enter an order granting the petition and make proper arrangements to proceed with the determination. The board may initiate a determination of rights under its own motion if after a hearing it finds that the public interest and necessity will be served by a determination of the rights involved.

SEC. 58. Section 2526 of the Water Code is amended to read:

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

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

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

(c) The date prior to which all claimants to rights to the water of the stream system shall notify the board in writing of their intention to file proof of claim and the address to which all subsequent notices to the claimant relating to the proceedings may be ~~sent~~; sent.

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

SEC. 59. Section 2550 of the Water Code is amended to read:

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

SEC. 60. Section 2763.5 of the Water Code is amended to read:

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

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

SEC. 61. 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 that the statement is submitted within six months after it is required to be filed with the board.

(2) Paragraph (1) does not apply to any use that occurred before January 1, 2009.

SEC. 62. Part 2.55 (commencing with Section 10608) is added to Division 6 of the Water Code, to read:

PART 2.55. SUSTAINABLE WATER USE AND DEMAND REDUCTION

CHAPTER 1. GENERAL DECLARATIONS AND POLICY

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

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

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

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

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

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

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

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

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

(i) Per capita water use is a valid measure of a water provider's efforts to reduce urban water use within its service area. However, per capita water use is less useful for measuring relative water use efficiency between different water providers. Differences in weather, historical patterns of urban and suburban development, and density of housing in a particular location need to be considered when assessing per capita water use as a measure of efficiency.

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

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

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

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

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

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

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

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

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

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

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

(k) Advance regional water resources management.

10608.8. (a) Water use efficiency measures adopted and implemented pursuant to this part are water conservation measures subject to the protections provided under Section 1011.

(b) This part does not limit or otherwise affect the application of Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) This part does not require a reduction in the total water used in the agricultural or urban sectors, because other factors, 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 irrigated acres, excluding recycled water. “Agricultural water supplier” includes a supplier or contractor for water, regardless of the basis of right, that distributes or sells water for ultimate resale to customers.

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

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

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

(3) For the purposes of Section 10608.22, the urban retail water supplier’s estimate of its average gross daily water use per capita, reported in gallons per capita

per day and calculated over a continuous five-year period ending no earlier than December 31, 2007, and no later than December 31, 2010.

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

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

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

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

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

(1) Recycled water that is delivered within the service area of 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.

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

(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, including, but not limited to, continuous manufacturing processes. Process water uses, include, but are not limited to, 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 meet the following requirements, where applicable:

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

- (A) Metered.
- (B) Developed through planned investment by the urban water supplier or a wastewater treatment agency.
- (C) Treated to a minimum tertiary level.

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

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

(n) “Regional water resources management” means any of the following alternative sources of water:

- (1) The capture and reuse of stormwater or rainwater.
- (2) The use of recycled water.
- (3) The desalination of brackish groundwater.
- (4) The conjunctive use of surface water and groundwater in a manner that is consistent with the safe yield of the groundwater basin.

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

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

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

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

CHAPTER 3. URBAN RETAIL WATER SUPPLIERS

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

(b) The state shall make incremental progress towards the state target specified in subdivision (a) by reducing per capita water use by at least 10 percent on or before December 31, 2015.

10608.20. (a) (1) Each urban retail water supplier shall develop urban water use targets and an interim urban water use target by December 31, 2010. Urban retail water suppliers may elect to determine and report progress toward achieving these

targets on an individual or regional basis, as provided in subdivision (a) of Section 10608.28, and may determine the targets on a fiscal year or calendar year basis.

(2) It is the intent of the Legislature that the urban water use targets described in subdivision (a) cumulatively result in a 20-percent reduction from the baseline daily per capita water use by 2020.

(b) An urban retail water supplier shall adopt one of the following methods for determining its urban water use target pursuant to subdivision (a):

(1) Eighty percent of the urban retail water supplier's baseline per capita daily water use.

(2) The per capita daily water use that is estimated using the sum of the following performance standards:

(A) For indoor residential water use, 55 gallons per capita daily water use as a provisional 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 Plan (dated April 30, 2009). If the service area of an urban water supplier includes more than one hydrologic region, the supplier shall apportion its service area to each region based on population or area.

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

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

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

(f) (1) The department shall, through a public process and in consultation with the California Urban Water Conservation Council, develop technical methodologies for the consistent implementation of this part, including, but not limited to, methodologies for calculating base daily per capita water use, baseline commercial, industrial, and institutional water use, compliance daily per capita water use, gross water use, service area population, indoor residential water use, and landscaped area,

and criteria for adjustments pursuant to subdivisions (d) and (e) of Section 10608.24. The department shall post these methodologies on its Internet Web site, and make written copies available, by October 1, 2010. An urban retail water supplier shall use the methods developed by the department in compliance with this part.

(2) An urban retail water supplier shall be granted an extension to July 1, 2011, for adoption of an urban water management plan pursuant to Part 2.6 (commencing with Section 10610) due in 2010 to allow use of technical methodologies developed by the department under paragraph (1). An urban retail water supplier that adopts an urban water management plan due in 2010 that does not use the methodologies developed by the department shall amend the plan by July 1, 2011, in order to be in compliance with this part.

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

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

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

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

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

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

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

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

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

(e) When determining gross water use, an urban retail water supplier that has a substantial percentage of industrial water use in its service area, may exclude process water in order to avoid a disproportionate burden on another customer sector.

(f) (1) An urban retail water supplier that includes agricultural water use in an urban water management plan pursuant to Part 2.6 (commencing with Section 10610) may include the agricultural water use in determining gross water use. An urban retail water supplier that includes agricultural water use in determining gross water use and develops its urban water use target pursuant to paragraph (2) of subdivision (b) of Section 10608.20 shall use a water efficient standard for agricultural irrigation of 100

percent of reference evapotranspiration multiplied by the crop coefficient for irrigated acres.

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

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

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

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

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

(b) In complying with this part, an urban retail water supplier shall avoid placing a disproportionate burden on any customer sector.

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

(d) (1) An urban retail water supplier shall not require customers to undertake changes in product formulation, operations, or equipment that would reduce process

water use, but may provide technical assistance and financial incentives to those customers to implement efficiency measures for process water.

(2) This part shall not be construed, or enforced so as, to interfere with the requirements of Section 110105 of the Health and Safety Code, or any requirement or standard for the protection of public health, public safety, or worker safety established by federal, state, or local governments or recommended by recognized standard setting organizations or trade associations.

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

- (1) Through an urban wholesale water supplier.
- (2) Through a regional agency authorized to plan and implement water conservation, including, but not limited to, an agency established under the Bay Area Water Supply and Conservation Agency Act (Division 31 (commencing with Section 81300)).
- (3) Through a regional water management group.
- (4) By an integrated regional water management funding area.
- (5) By hydrologic region.
- (6) Through other appropriate geographic scales for which computation methods have been developed by the department.

(b) An urban retail water supplier may meet its urban water use target entirely through efficiency gains in its residential water use sector, entirely through efficiency gains in its landscape water use sector, entirely through efficiency gains in its

commercial, institutional, and industrial sector, or through any combination among these sectors.

10608.32. All costs incurred pursuant to this part by a water utility regulated by the Public Utilities Commission may be recoverable in rates subject to review and approval by the Public Utilities Commission, and may be recorded in a memorandum account and reviewed for reasonableness by the Public Utilities Commission.

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

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

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

10608.43. The department shall, in conjunction with the California Urban Water Conservation Council, by April 1, 2010, convene a representative task force consisting of academic experts, urban retail water suppliers, environmental organizations,

commercial water users, industrial water users, and institutional water users to develop alternative best management practices for commercial, industrial, and institutional users and an assessment of the potential statewide reduction in water use in the commercial, industrial, and institutional sectors that would result from implementation of these best management practices. The task force shall submit a report to the Legislature by April 1, 2012, that shall include a review of multiple sectors within commercial, industrial, and institutional users and that shall establish water use efficiency standards for commercial, industrial, and institutional users among various sectors of water use. The report shall include, but not be limited to, the following:

- (a) Appropriate metrics for evaluating commercial, industrial, 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 technically feasible 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.

(3) Facilitate the financing of capital improvements for on-farm irrigation systems.

(4) Implement an incentive pricing structure that promotes one or more of the following goals:

(A) More efficient water use at the farm level.

(B) Conjunctive use of groundwater.

- (C) Appropriate increase of groundwater recharge.
 - (D) Reduction in problem drainage.
 - (E) Improved management of environmental resources.
 - (F) Effective management of all water sources throughout the year by adjusting seasonal pricing structures based on current conditions.
- (5) Expand line or pipe distribution systems, and construct regulatory reservoirs to increase distribution system flexibility and capacity, decrease maintenance, and reduce seepage.
- (6) Increase flexibility in water ordering by, and delivery to, water customers within operational limits.
- (7) Construct and operate supplier spill and tailwater recovery systems.
- (8) Increase planned conjunctive use of surface and groundwater within the supplier service area.
- (9) Automate canal control structures.
- (10) Facilitate or promote customer pump testing and evaluation.
- (11) Designate a water conservation coordinator who will develop and implement the water management plan and prepare progress reports.
- (12) Provide for the availability of water management services to water users. These services may include, but are not limited to, all of the following:
- (A) On-farm irrigation and drainage system evaluations.
 - (B) Normal year and real-time irrigation scheduling and crop evapotranspiration information.
 - (C) Surface water, groundwater, and drainage water quantity and quality data.

(D) Agricultural water management educational programs and materials for farmers, staff, and the public.

(13) Evaluate the policies of agencies that provide the supplier with water to identify the potential for institutional changes to allow more flexible water deliveries and storage.

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

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

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

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

(g) On or before December 31, 2013, December 31, 2016, and December 31, 2021, the department, in consultation with the board, shall submit to the Legislature a report on the agricultural efficient water management practices that have been

implemented and are planned to be implemented and an assessment of the manner in which the implementation of those efficient water management practices has affected and will affect agricultural operations, including estimated water use efficiency gains, if any.

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

CHAPTER 5. SUSTAINABLE WATER MANAGEMENT

10608.50. (a) The department, in consultation with the board, shall promote implementation of regional water resource 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 5.5. 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 6. FUNDING PROVISIONS

10608.56. (a) Beginning July 1, 2016, the terms of, and eligibility for, a water management grant or loan made to urban retail water suppliers and awarded or administered by the department, board, or California Bay-Delta Authority or its successor agency shall be conditioned on the implementation of Chapter 3 (commencing with Section 10608.16).

(b) Beginning July 1, 2013, the terms of, and eligibility for, a water management grant or loan made to agricultural water suppliers and awarded or administered by the department, board, or California Bay-Delta Authority or its successor agency shall be conditioned on the implementation of Chapter 4 (commencing with Section 10608.48).

(c) Notwithstanding subdivision (a), the department shall determine that an urban retail water supplier is eligible for a water management 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 management funds.

(d) Notwithstanding subdivision (b), the department shall determine that an agricultural water supplier is eligible for a water management grant or loan even though the supplier is not implementing all of the efficient water management practices described in Section 10608.48, if the agricultural 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 efficient water management practices. The supplier may request grant or loan funds to implement the efficient water management practices to the extent the request is consistent with the eligibility requirements applicable to the water management funds.

(e) Notwithstanding subdivision (a), the department shall determine that an urban retail water supplier is eligible for a water management 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 documentation demonstrating that their entire service area qualifies as a disadvantaged community.

(f) The department shall not deny eligibility to an urban retail water supplier or agricultural water supplier in compliance with the requirements of this part and Part 2.8 (commencing with Section 10800), 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 requirements of this part or Part 2.8 (commencing with Section 10800).

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

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

CHAPTER 7. 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.

SEC. 63. 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 water demand management measures to the extent the request is consistent with the eligibility requirements applicable to the water management funds.

(4) (A) 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 an urban water supplier submits to the department for approval documentation demonstrating that a water demand management measure is not locally cost effective. If the department determines that the documentation submitted by the urban water supplier fails to demonstrate that a water demand management measure is not locally cost effective, the department shall notify the urban water supplier and the agency administering the grant or loan program within 120 days that the documentation does not satisfy the requirements for an exemption, and include in that notification a detailed statement to support the determination.

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

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

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

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

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

(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. 64. Part 2.8 (commencing with Section 10800) of Division 6 of the Water Code is repealed.

SEC. 65. Part 2.8 (commencing with Section 10800) is added to Division 6 of the Water Code, to read:

PART 2.8. AGRICULTURAL WATER MANAGEMENT PLANNING

CHAPTER 1. GENERAL DECLARATIONS AND POLICY

10800. This part shall be known and may be cited as the Agricultural Water Management Planning Act.

10801. The Legislature finds and declares all of the following:

- (a) The waters of the state are a limited and renewable resource.
- (b) The California Constitution requires that water in the state be used in a reasonable and beneficial manner.
- (c) Urban water districts are required to adopt water management plans.
- (d) The conservation of agricultural water supplies is of great statewide concern.
- (e) There is a great amount of reuse of delivered water, both inside and outside the water service areas.
- (f) Significant noncrop beneficial uses are associated with agricultural water use, including streamflows and wildlife habitat.
- (g) Significant opportunities exist in some areas, through improved irrigation water management, to conserve water or to reduce the quantity of highly saline or toxic drainage water.
- (h) Changes in water management practices should be carefully planned and implemented to minimize adverse effects on other beneficial uses currently being served.

(i) Agricultural water suppliers that receive water from the Central Valley Project are required by federal law to prepare and implement water conservation plans.

(j) Agricultural water users applying for a permit to appropriate water from the board are required to prepare and implement water conservation plans.

10802. The Legislature finds and declares that all of the following are the policies of the state:

(a) The conservation of water shall be pursued actively to protect both the people of the state and the state's water resources.

(b) The conservation of agricultural water supplies shall be an important criterion in public decisions with regard to water.

(c) Agricultural water suppliers shall be required to prepare water management plans to achieve conservation of water.

CHAPTER 2. DEFINITIONS

10810. Unless the context otherwise requires, the definitions set forth in this chapter govern the construction of this part.

10811. "Agricultural water management plan" or "plan" means an agricultural water management plan prepared pursuant to this part.

10812. "Agricultural water supplier" has the same meaning as defined in Section 10608.12.

10813. "Customer" means a purchaser of water from a water supplier who uses water for agricultural purposes.

10814. "Person" means any individual, firm, association, organization, partnership, business, trust, corporation, company, public agency, or any agency of that entity.

10815. "Public agency" means any city, county, city and county, special district, or other public entity.

10816. "Urban water supplier" has the same meaning as set forth in Section 10617.

10817. "Water conservation" means the efficient management of water resources for beneficial uses, preventing waste, or accomplishing additional benefits with the same amount of water.

CHAPTER 3. AGRICULTURAL WATER MANAGEMENT PLANS

Article 1. General Provisions

10820. (a) An agricultural water supplier shall prepare and adopt an agricultural water management plan in the manner set forth in this chapter on or before December 31, 2012, and shall update that plan on December 31, 2015, and on or before December 31 every five years thereafter.

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

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

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

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

Article 2. Contents of Plans

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

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

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

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

- (1) Size of the service area.
 - (2) Location of the service area and its water management facilities.
 - (3) Terrain and soils.
 - (4) Climate.
 - (5) Operating rules and regulations.
 - (6) Water delivery measurements or calculations.
 - (7) Water rate schedules and billing.
 - (8) Water shortage allocation policies.
- (b) Describe the quantity and quality of water resources of the agricultural water supplier, including all of the following:
- (1) Surface water supply.
 - (2) Groundwater supply.
 - (3) Other water supplies.
 - (4) Source water quality monitoring practices.
 - (5) Water uses within the agricultural water supplier's service area, including all of the following:
 - (A) Agricultural.
 - (B) Environmental.
 - (C) Recreational.
 - (D) Municipal and industrial.
 - (E) Groundwater recharge.
 - (F) Transfers and exchanges.
 - (G) Other water uses.

- (6) Drainage from the water supplier's service area.
- (7) Water accounting, including all of the following:
 - (A) Quantifying the water supplier's water supplies.
 - (B) Tabulating water uses.
 - (C) Overall water budget.
- (8) Water supply reliability.
- (c) Include an analysis, based on available information, of the effect of climate change on future water supplies.
- (d) Describe previous water management activities.
- (e) Include in the plan the water use efficiency information required pursuant to Section 10608.48.

10827. Agricultural water suppliers that are members of the Agricultural Water Management Council, and that submit water management plans to that council in accordance with the "Memorandum of Understanding Regarding Efficient Water Management Practices By Agricultural Water Suppliers In California," dated January 1, 1999, may submit the water management plans identifying water demand management measures currently being implemented, or scheduled for 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 areawide, 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. After the hearing, the plan shall be adopted as prepared or as modified during or after the hearing.

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

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

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

- (1) The department.
- (2) Any city, county, or city and county within which the agricultural water supplier provides water supplies.
- (3) Any groundwater management entity within which jurisdiction the agricultural water supplier extracts or provides water supplies.
- (4) Any urban water supplier within which jurisdiction the agricultural water supplier provides water supplies.

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

(6) The California State Library.

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

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

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

10845. (a) The department shall prepare and submit to the Legislature, on or before December 31, 2013, and thereafter in the years ending in six and years ending in one, a report summarizing the status of the plans adopted pursuant to this part.

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

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

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

CHAPTER 4. MISCELLANEOUS PROVISIONS

10850. (a) Any action or proceeding to attack, review, set aside, void, or annul the acts or decisions of an agricultural water supplier on the grounds of noncompliance with this part shall be brought pursuant to Section 1085 of the Code of Civil Procedure, and the court's review of compliance or noncompliance with this part shall extend to whether the plan, or portion thereof, or revision thereto, substantially complies with the requirements of this part.

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

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

(d) In an action or proceeding to attack, review, set aside, void, or annul the acts or decisions of an agricultural water supplier made pursuant to this part at a properly noticed public hearing, the issues raised shall be limited to those raised in the public hearing, or in written correspondence delivered to the agricultural water supplier prior to, or at, the public hearing, except if the court finds either of the following:

(1) The issue could not have been raised at the public hearing by a person exercising reasonable diligence.

(2) The body conducting the public hearing prevented the issue from being raised at the public hearing.

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 that does not prepare, adopt, and submit its agricultural water management plan in accordance with this part is ineligible to receive funds made available pursuant to any program administered by the board, the department, or the California Bay-Delta Authority or its successor agency, or participate in any drought assistance program administered by the state, until the agricultural water management plan is submitted pursuant to 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 and Part 2.55 (commencing with Section 10608) unless sufficient funding has specifically been provided to that water supplier for these purposes.

SEC. 66. 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 the intent of the Legislature that, if local groundwater interests are unable or unwilling to perform the monitoring functions described in this part, the department shall assume those monitoring functions and the department shall recover its costs for conducting the necessary monitoring from the local groundwater users.

(c) 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 principle 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 expand or otherwise affect the authority of a water replenishment district relating to monitoring groundwater elevations.

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

(d) A local agency that is managing all or part of a groundwater basin or subbasin pursuant to an integrated regional water management plan prepared pursuant to Part

2.2 (commencing with Section 10530) that includes a groundwater management component that complies with the requirements of Section 10753.7.

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

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

(g) The department pursuant to Section 10934.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Verify that each notification is complete.

(B) Assess the qualifications of the notifying party.

(b) If the department has questions about the completeness or accuracy of a notification, or the qualifications of a party, the department shall contact the party to resolve any deficiencies. If the department is unable to resolve the deficiencies, the department shall notify the party in writing that the notification will not be considered further until the deficiencies are corrected.

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

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

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

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

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

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

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

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

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

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

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

(1) The population overlying the basin or subbasin.

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

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

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

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

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

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

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

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

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

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

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

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

(C) A voluntary groundwater monitoring association pursuant 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) If the department determines, with regard to a basin or subbasin, that there is insufficient interest in establishing a plan or association described in paragraph (2) of subdivision (c), and if the county decides not to perform the groundwater monitoring and reporting functions of this part, the department shall do all of the following:

(1) Identify any existing monitoring wells that overlie the basin or subbasin that are owned or operated by the department or any other state or federal agency.

(2) Determine whether the monitoring wells identified pursuant to paragraph (1) provide sufficient information to demonstrate seasonal and long-term trends in groundwater elevations.

(3) If the department determines that the monitoring wells identified pursuant to paragraph (1) provide sufficient information to demonstrate seasonal and long-term

trends in groundwater elevations, the department shall not perform groundwater monitoring functions pursuant to Section 10934.

(4) If the department determines that the monitoring wells identified pursuant to paragraph (1) provide insufficient information to demonstrate seasonal and long-term trends in groundwater elevations, and the State Mining and Geology Board concurs with that determination, the department shall perform groundwater monitoring functions pursuant to Section 10934.

10934. (a) Consistent with Section 10933, the department shall perform the groundwater monitoring functions for those portions of a basin or subbasin for which no monitoring entity has agreed to perform the groundwater monitoring functions.

(b) Upon determining that it is required to perform groundwater monitoring functions, the department shall notify both of the following entities that it is forming the groundwater monitoring district:

(1) Each well owner within the affected area.

(2) Each county that contains all or a part of the affected area.

(c) The department shall impose a charge on each well owner for its share of the costs of the department to perform the groundwater monitoring required under this part.

(d) The department shall not assess a fee or charge to recover the costs for carrying out its power and duties under this part except as provided in subdivision (c).

(e) The department may establish regulations to implement this section.

10935. (a) A voluntary cooperative groundwater monitoring association may be formed for the purposes of monitoring groundwater elevations in accordance with

this part. The association may be established by contract, a joint powers agreement, a memorandum of agreement, or other form of agreement deemed acceptable by the department.

(b) Upon notification to the department by one or more entities that seek to form a voluntary cooperative groundwater monitoring association, the department shall work cooperatively with the interested parties to facilitate the formation of the association.

(c) The contract or agreement shall include all of the following:

- (1) The names of the participants.
- (2) The boundaries of the area covered by the agreement.
- (3) The name or names of the parties responsible for meeting the requirements of this part.

(4) The method of recovering the costs associated with meeting the requirements of this part.

(5) Other provisions that may be required by the department.

10936. Costs incurred by the department pursuant to this chapter may be funded from unallocated bond revenues pursuant to paragraph (12) of subdivision (a) of Section 75027 of the Public Resources Code, to the extent those funds are available for those purposes, except as provided in subdivision (c) of Section 10934.

SEC. 67. Section 12924 of the Water Code is repealed.

~~12924. (a) The department shall, in conjunction with other public agencies, 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 such basins to the extent necessary to identify basins which 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, 1980.~~

SEC. 68. Section 12924 is added to the Water Code, to read:

12924. (a) The department, in conjunction with other public 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 and 0.

SEC. 69. Division 26.4 (commencing with Section 79400) of the Water Code is repealed.

SEC. 70. 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 supply for the state, and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan.

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

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

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

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

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

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

(a) The economies of major regions of the state depend on the ability to import water from the Delta watershed. More than two-thirds of the residents of the state and

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

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

CHAPTER 2. DELTA POLICY

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

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

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

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

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

(e) Achieve water quality objectives in the Delta.

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

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

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

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

85022. (a) It is the intent of the Legislature that state and local land use actions be consistent with the Delta Plan. This section's findings, policies, and goals apply to Delta land-use planning and development.

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

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

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

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

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

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

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

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

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

(3) Maximize public access to Delta resources and maximize 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.

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. 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, any pre-1914 water rights, provided under the law. This division does not limit or otherwise affect the application of Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections 12200 to 12220, inclusive.

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

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

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

(c) The Fish and Game Code.

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

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

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

(g) Section 1702.

(h) The application of the public trust doctrine.

(i) Any water right.

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

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

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

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

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

(c) The council shall have possession and control of all records, papers, equipment, supplies, contracts, leases, agreements, and other property, real or personal, connected with the administration of Division 26.4 (commencing with Section 79400), as that division read on December 31, 2009, or held for the benefit or use of the California Bay-Delta Authority.

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

CHAPTER 4. DEFINITIONS

85050. Unless the context otherwise requires, the definitions set forth in this chapter govern the construction of this division.

85051. “Acquisition” means the acquisition of a fee interest or any other interest, including easements, leases, and development rights.

85052. “Adaptive management” means a framework and flexible decisionmaking process for ongoing knowledge acquisition, monitoring, and evaluation leading to continuous improvement in management planning and implementation of a project to achieve specified objectives.

85053. “Bay Delta Conservation Plan” or “BDCP” means a multispecies conservation plan.

85054. “Coequal goals” means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

85055. "Commission" means the Delta Protection Commission established in Division 19.5 (commencing with Section 29700) of the Public Resources Code.

85056. "Conservancy" means the Sacramento-San Joaquin Delta Conservancy established in Section 32320 of the Public Resources Code.

85057. "Council" means the Delta Stewardship Council established in Section 85200.

85057.5. (a) "Covered action" means a plan, program, project, or activity that meets all of the following conditions:

(1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.

(2) Will be carried out, approved, or funded by the state or a local public agency.

(3) Is covered by one or more provisions of the Delta Plan.

(4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.

(b) "Covered action" does not include either of the following:

(1) A regulatory action of a state agency.

(2) Routine maintenance and operation of the State Water Project or the federal Central Valley Project.

85058. "Delta" means the Sacramento-San Joaquin Delta as defined in Section 12220 and the Suisun Marsh as defined in Section 29101 of the Public Resources Code.

85059. "Delta Plan" means the comprehensive, long-term management plan for the Delta as adopted by the council in accordance with this division.

85060. "Delta watershed" means the Sacramento River Hydrologic Region and the San Joaquin River Hydrologic Region as described in the department's Bulletin No. 160-05.

85064. "Public water agency" means a public entity, as defined in Section 514, that provides water service, as defined in Section 515.

85066. "Restoration" means the application of ecological principles to restore a degraded or fragmented ecosystem and return it to a condition in which its biological and structural components achieve a close approximation of its natural potential, taking into consideration the physical changes that have occurred in the past and the future impact of climate change and sea level rise.

85067. "Strategic Plan" means both the "Delta Vision Strategic Plan" issued by the Delta Vision Blue Ribbon Task Force on October 17, 2008, and the "Delta Vision Implementation Report" adopted by the Delta Vision Committee and dated December 31, 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 purposes of facilitating the planning decisions that are required to achieve the objectives of the Delta Plan.

(c) (1) Pursuant to its public trust obligations, the board shall develop new flow criteria for the Delta ecosystem necessary to protect public trust resources. In carrying out this section, the board shall review existing water quality objectives and use the best available scientific information. The flow criteria for the Delta ecosystem shall include the volume, quality, and timing of water necessary for the Delta ecosystem under different conditions. The flow criteria shall be developed in a public process by the board within nine months of the enactment of this division. The flow criteria shall not be considered predecisional with regard to any subsequent board consideration of a permit, including any permit in connection with a final BDCP.

(2) Any order approving a change in point of diversion of the State Water Project and the federal Central Valley Project from the southern Delta to a point on the Sacramento River shall include appropriate Delta flow criteria and shall be informed by the analysis conducted pursuant to this section. The flow criteria shall be subject to modification over time based on a science-based adaptive management program that integrates scientific and monitoring results, including the contribution of habitat and other conservation measures, into ongoing Delta water management.

(3) Nothing in this section amends or otherwise affects the application of the board's authority under Part 2 (commencing with Section 1200) of Division 2 to include terms and conditions in permits that in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated.

(d) The board shall enter into an agreement with the State Water Project contractors and the federal Central Valley Project contractors, who rely on water exported from the Sacramento River watershed, or a joint powers authority comprised of those contractors, for reimbursement of the costs of the analysis conducted pursuant to this section.

(e) The board shall submit its flow criteria determinations pursuant to this section to the council for its information within 30 days of completing the determinations.

85087. The board, by December 31, 2010, shall submit to the Legislature a prioritized schedule and estimate of costs to complete instream flow studies for the Delta and for high priority rivers and streams in the Delta watershed, not otherwise covered by Section 85086, by 2012, and for all major rivers and streams outside the Sacramento River watershed by 2018. In developing this schedule, the board shall consult with the Department of Fish and Game as to the timing of its submission of recommendations for instream flow needs.

85088. Until the board issues an order approving a change in the point of diversion of the State Water Project and the federal Central Valley Project from the southern Delta to a point on the Sacramento River as specified in subdivision (c) of Section 85086, the department shall not commence construction of any diversion, conveyance, or other facility necessary to divert and convey water pursuant to the change in point of diversion.

85089. Construction of a new Delta conveyance facility shall not be initiated until the persons or entities that contract to receive water from the State Water Project

and the federal Central Valley Project or a joint powers authority representing those entities have made arrangements or entered into contracts to pay for:

(a) The costs of the environmental review, planning, design, construction, mitigation and operation and maintenance of any new Delta water conveyance facility.

(b) Full mitigation of property tax or assessments levied by local governments or special districts for land used in the construction, location, mitigation, or operation of new Delta conveyance 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 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) The initial term of office of each member of the council shall be one, two, three, or four years, as specified in subdivision (c), and all subsequent terms shall be four years.

(3) 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) The Governor, upon his or her appointment of members pursuant to subdivision (b), shall designate the appointees as serving initial terms of either one or two years. One class shall have three members and the other two classes shall have two members each. For the class that has three members, the terms of office shall be one year. The second class, composed of two members, shall serve two years. The third class, composed of two members, one each appointed by the Senate Committee on Rules and the Speaker of the Assembly, by July 1, 2010, shall serve four years. Thereafter, the terms of all succeeding members shall be four years.

(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 its 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. 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.

(a) Each member of the council shall receive the salary provided for in Section 11564 of the Government Code.

(b) The members of the council shall be reimbursed for expenses necessarily incurred in the performance of official duties.

(c) The council shall appoint an executive officer who shall serve full time at the pleasure of the council.

(d) The executive officer shall hire employees necessary to carry out council functions.

(e) The number of employees and qualifications of those employees shall be determined by the council, subject to the availability of funds.

(f) 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.

(g) 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.
- (d) To delegate administrative functions to council staff.
- (e) To employ its own legal staff or contract with other state or federal agencies for legal services, or both. The council may employ special legal counsel with the approval of the Attorney General.
- (f) To receive funds, including funds from private and local governmental sources, contributions from public and private sources, as well as state and federal appropriations.
- (g) To disburse funds through grants, public assistance, loans, and contracts.
- (h) To request reports from state, federal, and local governmental agencies on issues related to the implementation of the Delta Plan.
- (i) To adopt regulations or guidelines as needed to carry out the powers and duties identified in this division.
- (j) To comment on state agency environmental impact reports for projects outside the Delta that the council determines will have a significant impact on the Delta.
- (k) To hold hearings in all parts of the state necessary to carry out the powers vested in it, and for those purposes has the powers conferred upon the heads of state departments pursuant to Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code. Any hearing by the council

may be conducted by any member of the council, or other designee, upon authorization of the council, and he or she shall have the powers granted to the council by this section, provided that any final action of the council shall be taken by a majority of the members of the council at a meeting duly called and held.

85211. The Delta Plan shall include performance measurements that will enable the council to track progress in meeting the objectives of the Delta Plan. The performance measurements shall include, but need not be limited to, quantitative or otherwise measurable assessments of the status and trends in all of the following:

(a) The health of the Delta's estuary and wetland ecosystem for supporting viable populations of aquatic and terrestrial species, habitats, and processes, including viable populations of Delta fisheries and other aquatic organisms.

(b) The reliability of California water supply imported from the Sacramento River or the San Joaquin River watershed.

CHAPTER 3. CONSISTENCY OF STATE AND LOCAL PUBLIC AGENCY ACTIONS

85225. A state or local public agency that proposes to undertake a covered action, prior to initiating the implementation of that covered action, shall prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and shall submit that certification to the council.

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 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, but not be limited to,

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, and authority to issue a notice of proposed cease and desist order or administrative civil liability complaint.

(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 the Delta Watermaster for which a petition for reconsideration is filed or reconsideration is ordered under Section 1122. The board may provide any additional duties or needs of the Delta Watermaster that the board deems necessary for effective day-to-day enforcement of its decisions.

(d) The Delta Watermaster shall submit regular reports to the board and the council including, but not limited to, reports on water rights administration, water quality issues, and conveyance operations.

CHAPTER 5. DELTA INDEPENDENT SCIENCE BOARD AND DELTA SCIENCE PROGRAM

85280. (a) The Delta Independent Science Board is hereby established in state government.

(1) The Delta Independent Science Board shall consist of no more than 10 members appointed by the council. The term of office for members of the Delta Independent Science Board shall be five years. A member may serve no more than two terms.

(2) Members of the Delta Independent Science Board shall be nationally or internationally prominent scientists with appropriate expertise to evaluate the broad range of scientific programs that support adaptive management of the Delta. The members shall not be directly affiliated with a program or agency subject to the review activities of the Delta Independent Science Board.

(3) The Delta Independent Science Board shall provide oversight of the scientific research, monitoring, and assessment programs that support adaptive management of the Delta through periodic reviews of each of those programs that shall be scheduled to ensure that all Delta scientific research, monitoring, and assessment programs are reviewed at least once every four years.

(4) The Delta Independent Science Board shall submit to the council a report on the results of each review, including recommendations for any changes in the programs reviewed by the board.

(b) After consultation with the Delta Independent Science Board, the council shall appoint a lead scientist for the Delta Science Program.

(1) The lead scientist shall meet all of the following qualifications:

(A) Hold an advanced degree in a field related to water or ecosystem management.

(B) Have a strong record of scientific research and publication in peer-reviewed scientific journals in a field related to water or ecosystem management.

(C) Have experience advising high-level managers in science-based decisionmaking in the areas of water management and ecosystem restoration.

(D) Have the capability to guide the application of an adaptive management process to resource management policy decision in the Delta.

(2) The term of office for the lead scientist shall be no more than three years. The lead scientist may serve no more than two terms.

(3) The lead scientist shall oversee the implementation of the Delta Science Program. In carrying out that responsibility, the lead scientist shall regularly consult with the agencies participating in the program.

(4) The mission of the Delta Science Program shall be to provide the best possible unbiased scientific information to inform water and environmental decisionmaking in the Delta. That mission shall be carried out through funding research, synthesizing and communicating scientific information to policymakers and decisionmakers, promoting independent scientific peer review, and coordinating with Delta agencies to promote science-based adaptive management. The Delta Science Program shall assist with development and periodic updates of the Delta Plan's adaptive management program.

(c) The Delta Science Program shall function as a replacement for, and successor to, the CALFED Science Program and the Delta Independent Science Board shall replace the CALFED Independent Science Board.

PART 4. COMPREHENSIVE DELTA PLANNING

CHAPTER 1. THE DELTA PLAN

85300. (a) On or before January 1, 2012, the council shall develop, adopt, and commence implementation of the Delta Plan pursuant to this part that furthers the coequal goals. The Delta Plan shall include subgoals and strategies to assist in guiding state and local agency actions related to the Delta. In developing the Delta Plan, the council shall consider each of the strategies and actions set forth in the Strategic Plan and may include any of those strategies or actions in the Delta Plan. The Delta Plan may also identify specific actions that state or local agencies may take to implement the subgoals and strategies.

(b) In developing the Delta Plan, the council shall consult with federal, state, and local agencies with responsibilities in the Delta. All state agencies with responsibilities in the Delta shall cooperate with the council in developing the Delta Plan, upon request of the council.

(c) The council shall review the Delta Plan at least once every five years and may revise it as the council deems appropriate. The council may request any state agency with responsibilities in the Delta to make recommendations with respect to revision of the Delta Plan.

(d) (1) The council shall develop the Delta Plan consistent with all of the following:

(A) The federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), or an equivalent compliance mechanism.

(B) Section 8 of the federal Reclamation Act of 1902.

(C) The federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.).

(2) If the council adopts a Delta Plan pursuant to the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the council shall submit the Delta Plan for approval to the United States Secretary of Commerce pursuant to that act, or to any other federal official assigned responsibility for the Delta pursuant to a federal statute enacted after January 1, 2010.

(e) The council shall report to the Legislature no later than March 31, 2012, as to its adoption of the Delta Plan.

85301. (a) The commission shall develop, for consideration and incorporation into the Delta Plan by the council, a proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place, in a manner consistent with the coequal goals. For the purpose of carrying out this subdivision, the commission may include in the proposal the relevant strategies described in the Strategic Plan.

(b) (1) The commission shall include in the proposal a plan to establish state and federal designation of the Delta as a place of special significance, which may include application for a federal designation of the Delta as a National Heritage Area.

(2) The commission shall include in the proposal a regional economic plan to support increased investment in agriculture, recreation, tourism, and other resilient land uses in the Delta. The regional economic plan shall include detailed

recommendations for the administration of the Delta Investment Fund created by Section 29778.5 of the Public Resources Code.

(c) For the purposes of assisting the commission in its preparation of the proposal, both of the following actions shall be undertaken:

(1) The Department of Parks and Recreation shall prepare a proposal, for submission to the commission, to expand within the Delta the network of state recreation areas, combining existing and newly designated areas. The proposal may incorporate appropriate aspects of any existing plans, including the Central Valley Vision Implementation Plan adopted by the Department of Parks and Recreation.

(2) The Department of Food and Agriculture shall prepare a proposal, for submission to the commission, to establish market incentives and infrastructure to protect and enhance the economic and public values of Delta agriculture.

(d) The commission shall submit the proposal developed pursuant to subdivision (a) to the council. The council shall consider the proposal and may include any portion of the proposal in the Delta Plan as it deems appropriate, to the extent that the proposal furthers the coequal goals.

85302. (a) Implementation of the Delta Plan shall further the restoration of the Delta ecosystem and a reliable water supply.

(b) The geographic scope of the ecosystem restoration projects and programs identified in the Delta Plan shall be the Delta, except that the Delta Plan may include recommended ecosystem projects outside the Delta that will contribute to achievement of the coequal goals.

(c) The Delta Plan shall include measures that promote all of the following characteristics of a healthy Delta ecosystem:

- (1) Viable populations of native resident and migratory species.
- (2) Functional corridors for migratory species.
- (3) Diverse and biologically appropriate habitats and ecosystem processes.
- (4) Reduced threats and stresses on the Delta ecosystem.
- (5) Conditions conducive to meeting or exceeding the goals in existing species recovery plans and state and federal goals with respect to doubling salmon populations.

(d) The Delta Plan shall include measures to promote a more reliable water supply that address all of the following:

- (1) Meeting the needs for reasonable and beneficial uses of water.
- (2) Sustaining the economic vitality of the state.
- (3) Improving water quality to protect human health and the environment.

(e) The following subgoals and strategies for restoring a healthy ecosystem shall be included in the Delta Plan:

- (1) Restore large areas of interconnected habitats within the Delta and its watershed by 2100.
- (2) Establish migratory corridors for fish, birds, and other animals along selected Delta river channels.
- (3) Promote self-sustaining, diverse populations of native and valued species by reducing the risk of take and harm from invasive species.
- (4) Restore Delta flows and channels to support a healthy estuary and other ecosystems.

(5) Improve water quality to meet drinking water, agriculture, and ecosystem long-term goals.

(6) Restore habitat necessary to avoid a net loss of migratory bird habitat and, where feasible, increase migratory bird habitat to promote viable populations of migratory birds.

(f) The council shall consider, for incorporation into the Delta Plan, actions designed to implement the subgoals and strategies described in subdivision (e).

(g) In carrying out this section, the council shall make use of the best available science.

(h) The Delta Plan shall include recommendations regarding state agency management of lands in the Delta.

85303. The Delta Plan shall promote statewide water conservation, water use efficiency, and sustainable use of water.

85304. The Delta Plan shall promote options for new and improved infrastructure relating to the water conveyance in the Delta, storage systems, and for the operation of both to achieve the coequal goals.

85305. (a) The Delta Plan shall attempt to reduce risks to people, property, and state interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and strategic levee investments.

(b) The council may incorporate into the Delta Plan the emergency preparedness and response strategies for the Delta developed by the California Emergency Management Agency pursuant to Section 12994.5.

85306. The council, in consultation with the Central Valley Flood Protection Board, shall recommend in the Delta Plan priorities for state investments in levee operation, maintenance, and improvements in the Delta, including both levees that are a part of the State Plan of Flood Control and nonproject levees.

85307. (a) The Delta Plan may identify actions to be taken outside of the Delta, if those actions are determined to significantly reduce flood risks in the Delta.

(b) The Delta Plan may include local plans of flood protection.

(c) The council, in consultation with the Department of Transportation, may address in the Delta Plan the effects of climate change and sea level rise on the three state highways that cross the Delta.

(d) The council, in consultation with the State Energy Resources Conservation and Development Commission and the Public Utilities Commission, may incorporate into the Delta Plan additional actions to address the needs of Delta energy development, energy storage, and energy distribution.

85308. The Delta Plan shall meet all of the following requirements:

(a) Be based on the best available scientific information and the independent science advice provided by the Delta Independent Science Board.

(b) Include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan.

(c) Where appropriate, utilize monitoring, data collection, and analysis of actions sufficient to determine progress toward meeting 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 based on the provisions of 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 alternatives and including further capacity and design options of a lined canal, an unlined canal, and pipelines.

(C) The potential effects of climate change, possible sea level rise up to 55 inches, and possible changes in total precipitation and runoff patterns on the conveyance alternatives and habitat restoration activities considered in the environmental impact report.

(D) The potential effects on migratory fish and aquatic resources.

(E) The potential effects on Sacramento River and San Joaquin River flood management.

(F) The resilience and recovery of conveyance alternatives in the event of catastrophic loss caused by earthquake or flood or other natural disaster.

(G) The potential effects of each conveyance alternative on Delta water quality.

(c) The department shall consult with the council and the Delta Independent Science Board during the development of the BDCP. The council shall be a responsible agency in the development of the environmental impact report. The Delta Independent

Science Board shall review the draft environmental impact report and submit its comments to the council and the Department of Fish and Game.

(d) If the Department of Fish and Game approves the BDCP as a natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code, the council shall have at least one public hearing concerning incorporation of the BDCP into the Delta Plan.

(e) If the Department of Fish and Game approves the BDCP as a natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code and determines that the BDCP meets the requirements of this section, and the BDCP has been approved as a habitat conservation plan pursuant to the federal Endangered Species Act (16 U.S.C. Section 1531 et seq.), the council shall incorporate the BDCP into the Delta Plan. The Department of Fish and Game's determination that the BDCP has met the requirements of this section may be appealed to the council.

(f) The department, in coordination with the Department of Fish and Game, or any successor agencies charged with BDCP implementation, shall report to the council on the implementation of the BDCP at least once a year, including the status of monitoring programs and adaptive management.

(g) The council may make recommendations to BDCP implementing agencies regarding the implementation of the BDCP. BDCP implementing agencies shall consult with the council on these recommendations. These recommendations shall not change the terms and conditions of the permits issued by state and federal regulatory agencies.

85321. The BDCP shall include a transparent, real-time operational decisionmaking process in which fishery agencies ensure that applicable biological performance measures are achieved in a timely manner with respect to water system operations.

85322. This chapter does not amend, or create any additional legal obligation or cause of action under, Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code, or Division 13 (commencing with Section 21000) of the Public Resources Code.

CHAPTER 3. OTHER PLANS FOR THE DELTA

85350. The council may incorporate other completed plans related to the Delta into the Delta Plan to the extent that the other plans promote the coequal goals.

SEC. 71. Pursuant to Section 75026 of the Public Resources Code, the sum of twenty-eight million dollars (\$28,000,000) is hereby appropriated to the Department of Water Resources for expenditure by that department pursuant to paragraph (12) of subdivision (a) of Section 75027 of the Public Resources Code for the Two-Gates Fish Protection Demonstration Program managed by the United States Bureau of Reclamation. The Department of Water Resources shall expend such funds only consistent with the requirements of Sections 75026 and 75027 of the Public Resources Code.

SEC. 72. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by

a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Amendment 5

On page 2, strike out lines 1 to 12, inclusive, and strike out pages 3 to 12, inclusive