

Analysis of 2009 Water Legislation

In the early morning hours of November 4, the Legislature approved a package of 5 bills designed to address water issues facing the state. These bills reflect almost ten months of negotiations between legislators and stakeholders. The package is financed through an \$11.14 billion bond. This bond will be presented to the voters in November of 2010 for approval. Below is a summary of the five bills and key provisions.

Senate Bill X7 1 (Simitian)

The key provision of this bill is the creation of a seven member Delta Stewardship Council (Council). The Council must develop a comprehensive Delta Management Plan (Plan). The Plan must be adopted by January 1, 2012 and reviewed every five years. The Council is charged with reviewing and providing advice to local and regional planning agencies regarding consistency of local/regional planning documents including sustainable communities' strategies and alternative planning strategies as outlined in the provisions of Senate Bill 375 (Steinberg, 2008). Metropolitan planning organizations, in the process of preparing a regional transportation plan that includes land within primary or secondary zone, must consult with the Council early in process to ensure the compatibility between the regional transportation plan and the broader Delta Plan.

This legislation also reduces the number of members on the Delta Protection Commission (Commission) to 15 and allocates three positions to city council members. One representative must be from the south Delta, defined as San Joaquin County and the other representative must be from the west Delta, defined as either Contra Costa or Solano County. The final representative shall be selected and appointed by a city selection committee from north Delta consisting of Yolo and Sacramento counties. These members will serve two-year terms.

The Commission is authorized to act as the facilitating agency for the implementation of any joint habitat restoration or enhancement programs located within the primary zones of the Delta. The Commission is also required to adopt an economic sustainability plan. SB X7 1 also limits the land use authority of the Commission to the Delta primary zone. Furthermore, local government general plans in the secondary zone may not be preempted by the Commission. By January 1, 2010, the Commission is required to prepare recommendations regarding changes or expansion to the primary zone.

This legislation also creates the Sacramento-San Joaquin Delta Conservancy (Conservancy). The 11 member Conservancy is charged with implementing ecosystem restoration and enhancement within the Delta region.

Finally, SB X7 1 states legislative intent that the Council and the Conservancy be funded from bond proceeds related to Proposition 1E and Proposition 84 passed in 2006.

SB X7 2 Cogdill

This measure contains the key financing provisions. SB X7 2 is an \$11.14 billion bond that will be included on the November 2010 ballot for ratification by the voters. The bond appropriates funds for a number of purposes.

Approximately \$455 million is available for drought relief projects. Specifically:

- \$190 million for planning, design and construction of local and regional drought relief projects.
- \$90 million for grants to disadvantaged communities or economically distressed areas experiencing economic impacts from drought for drought relief projects and programs.
- \$75 million to the State Water Resources Control Board (SWRCB) for grants to small community wastewater treatment projects to protect water quality.
- \$80 million for deposit into the Safe Drinking Water State Revolving Fund created by Section 116760.30 of the Health and Safety Code
- \$20 million available for water quality/public health projects on the New River.

Approximately \$1.4 billion is available for water supply reliability projects. Specifically:

- \$1 billion to the Department of Water Resources (DWR) for competitive grants and expenditures to implement an adopted integrated regional water management plans.
- \$50 million to DWR to administer grants for that address multiregional needs or state priorities.
- \$350 million to DWR for grants for planning, design and construction of local/regional conveyance projects that support regional and interregional connectivity and water management.

Approximately \$2.25 billion is available for projects pertaining to the Delta region. Specifically:

- \$750 million for projects including grants to cities within the Delta that provide public benefits and support Delta sustainability options, including projects and supporting scientific studies and assessments.
- \$1.5 billion to the Conservancy for projects that protect and enhance the sustainability of the Delta ecosystem.

Approximately \$3 billion is continuously appropriated to the California Water Commission for benefits associated with water storage projects. Projects funded under this section will need to match on a 1:1 basis with revenue bond funding. In addition projects will be selected by a new water board and meet specific criteria outlined in the bond language.

Approximately \$1.785 billion is available for ecosystem and watershed protection and restoration projects. These funds are appropriated to conservancies across the state as well as state boards and departments.

Approximately \$1 billion is available to prevent or reduce groundwater contamination.

Approximately \$1.250 billion is available for water recycling. Specifically:

- \$1 billion for water recycling and advanced treatment and technology projects
- \$250 million for water conservation and water use efficiency projects.

The legislation also states that no more than \$5.5 billion in bonds may be sold before July 1, 2015. This provision is designed to keep the state's debt payments to a reasonable level.

SB X7 6 (Steinberg)

SB X7 6 by Senator Steinberg establishes a groundwater monitoring program. The legislation authorizes the following entities to assume responsibility for monitoring and reporting groundwater elevations:

- Watermaster or water management engineer
- Groundwater management agency with statutory authority to manage groundwater
- Water replenishment district
- Local agency that was managing a groundwater basin as of January 1, 2010 pursuant to an integrated regional water management plan
- A county that is not managing all or a part of a groundwater basin
- A voluntary cooperative groundwater monitoring association

The Department of Water Resources is required to perform groundwater functions for any basin or area of a basin that is not monitored by another entity.

The measure also states that on or before January 1, 2012, DWR shall begin to identify the extent of monitoring of groundwater elevations that are being undertaken within each region.

SB X7 7 (Steinberg)

This legislation requires the state to achieve a 20% reduction in urban per capita water use by December 31, 2020. The bill also requires the state to make incremental progress toward this reduction by reducing per capita water use by at least 10% by December 31, 2015. Urban water retail suppliers are required to develop a target by July 1, 2011. The supplier has four methods for determining its target:

- 80% of the urban retail water supplier's baseline per capita daily use.
- The per capita daily water use that is estimated using the sum of the following performance standards:
 - For indoor residential use, 55 gallons per capita daily water use as a provisional standard.
 - For landscape irrigated through meters, water efficiency equivalent to the standards of the Model Water Efficient Landscape Ordinance set forth in state regulations
 - For commercial, industrial and institutional uses, a 10% reduction in water use from the baseline water use by 2020.
- 95% of the applicable state hydrologic region target as set forth in the state's draft "20x 2020" Water Conservation Plan dated April 30, 2009.
- A method that shall be identified and developed by the Department through a public process by December 31, 2010.

The language also ensures that no supplier will be required to achieve reductions greater than 20% by 2020.

Regarding agricultural water, suppliers shall implement efficient water management practices by July 31, 2012 and must also prepare a water management plan by December 31, 2012. This plan is designed to facilitate increased conservation among the agricultural community and is required to be updated on December 31, 2015 and every five years after. Agricultural water suppliers must notify each city and county in the area about the preparation and review of the plan.

SB X7 8 (Steinberg)

The most contentious piece of the package establishes reporting requirements for water diversions and imposes civil liabilities and penalties on individuals that fail to file appropriate statements.

SB X7 8 states that any person who fails to file a statement required to be filed for a diversion that occurs after January 1, 2009, who tampers with any measuring device or who makes a material misstatement may be liable civilly:

- Civil liability may be imposed by the SWRCB in amounts:
 - Not to exceed \$1000 for a failure to file a statement, plus \$500 per day for each additional day on which the person fails to file a statement within 30 days.
 - For a violation resulting from a physical malfunction of a measuring device not caused by the person, \$250 plus \$250 per each additional day on which the device continues to malfunction.
 - For knowingly tampering with any measuring device or knowingly making a material misstatement in a filing, \$25,000 plus \$1000 per day.
 - For any other violation, \$500 plus \$250 per day.

The SWRCB is authorized to waive additional day penalties in order to allow the violator to correct the violation.

The legislation also appropriates \$546 million from the 2009 Budget Act in the following ways:

- \$250 million for integrated regional water management grants that help reduce dependence on the Delta for water supply
- \$32 million for flood control projects to the Delta designed to reduce the potential for levee failures
- \$170 million to reduce the risk of levee failure
- \$70 million for grants for stormwater flood management projects
- \$24 million to the Wildlife Conservation Board for grants to implement or assist in the establishment of natural community conservation plans for areas around the Delta.

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