



## Government Relations & Public Affairs Committee

November 1, 2009

### State Water Legislation Update Revised

**Issue:** The legislature continues to work on comprehensive bills focused on achieving the coequal goals of ecosystem sustainability in the Delta and water supply reliability for California.

**Recommendation:** Staff will brief the committee on the fast-moving developments on the comprehensive bills; the item is noticed for Action to allow the committee to consider a new position for SACOG.

**Discussion:** On October 23, SACOG received a letter from Senate President Pro Tem Steinberg outlining how upcoming amendments to the policy and bond bills for achieving the coequal goals of managing the Delta addressed concerns that SACOG raised with the Senator at its October 5 meeting of the Government Relations & Public Affairs Committee. On November 1, SACOG received a second letter from Senate President Pro Tem Steinberg further clarifying how recent amendments to the Delta policy bill and bond bill address those concerns (Attachment A). New policy bills were released on Friday, October 30, and two new bond bills were released on Wednesday, October 28 (one by Sen. Steinberg and another by Sen. Cogdill). The policy bill is now in two formats, as one bill (SBX7 4) and as four bills (SBX7 1 – Land Use and Governance, SBX7 5 – Water Diversions and Fines, SBX7 6 – Groundwater Management, and SBX7 7 – Conservation). If the committee decides to recommend action to change SACOG's position on the legislation, it may do so for the whole package or for parts of the package.

Staff also understands that the policy and bond bills have been further split into eight new Assembly bills, which will be on third reading in the Assembly on Monday, November 2 (Attachment B).

Joint hearings of the Assembly Water, Parks, and Wildlife and Senate Natural Resources and Water Committees were held on Monday, October 26, for the policy bill and Wednesday, October 28, for the bond bill. Only Sen. Cogdill's bill was reviewed at the latter hearing. As of the writing of this staff report, staff understands that the legislature is scheduled to hear the bills on Monday, November 2, and could vote that day or the following day.

SACOG staff and legal counsel have been closely monitoring the bills and working with Sen. Steinberg's staff on amendments concerning issues raised by SACOG. Those issues were outlined in two letters sent to President Pro Tem Steinberg and Speaker Bass on September 9 and September 11 (Attachment C). The September 9 letter outlined five principles with which the bill should be consistent. The September 11 letter stated that SACOG opposes the bill unless amended and noted that, in addition to the five principles, there were specific concerns with threats to local control over land use and other decisions in the secondary zone, and limits on city representation on the Delta Protection Commission (rotational representation and prohibition from being chair). Additional issues were raised directly with Sen. Steinberg during the October 5 Government Relations & Public Affairs Committee meeting.

The analysis (Attachment D) follows the order in which SACOG issues are addressed in Sen. Steinberg's letter. However, for each issue the analysis indicates whether the issue was raised in (1) SACOG's September 9 letter of principles, (2) SACOG's September 11 oppose unless amended letter, or (3) at the October 5 meeting of this committee. Additionally, for each issue, staff has reviewed sections of the current Senate versions of the policy or bond bills related to that issue.

Approved by:

Mike McKeever  
Executive Director

MM:EJ:DS:sb  
Attachments

Key Staff: Rebecca Sloan, Director of External Affairs and Member Services, (916) 340-6224  
David Shabazian, Senior Planner, (916) 340-6231  
Erik Johnson, Public Information Coordinator, (916) 340-6247

November 1, 2009

Helen Thomson, Chair  
Sacramento Area Council of Governments  
1415 L Street  
Sacramento, CA 95814

Dear Helen:

I recently wrote to you and the members of SACOG to report to you on the status of the comprehensive water package being considered by the Legislature and the Governor, and to share with you the progress made on the various issues identified by SACOG's Government Relations and Public Affairs Committee in the meeting I attended on October 5th.

Both the Senate and Assembly are convening session this week to consider the comprehensive water legislation. This letter is to update you once again, and to respond to several items reviewed and discussed with board members and staff since my first letter, regarding the pending legislation.

As I noted in my earlier letter, the Sacramento-San Joaquin Delta counties and my local governments in the greater Sacramento region (i.e. SACOG, Regional Sanitation District, SMUD, Placer County etc.) have expressed concerns about various parts of the package and asked for a series of changes or improvements to the package for our region.

An update on each of those key issues is provided below (Please note that the actual legislative vehicles in which the policies appear is still a matter under discussion between the two houses of the Legislature):

1) *Increased Local Funding for Sacramento/Delta Region :*

As proposed by the Governor, and supported by the legislative leadership other than me, the comprehensive water package contained no direct funding to help Delta counties address water, flood protection, wastewater, economic development or other concerns.

I continue to advocate for the following changes to the package to increase local funding:

- a. *New funding for wastewater treatment part 1:* Sacramento County asked for a new and explicit requirement in law that any party proposing to build through-Delta conveyance fully mitigate the effects of that conveyance, including any mitigation and costs associated with upgrading the Sacramento Regional Sanitation Agency

waste water treatment plant. I have secured this language in the bill as agreed upon by the representatives of the district and the supporters of the legislation. [SB 4-7x (Steinberg)—page 95, lines 20-34—NOTE: one word change requested by parties on this to which the Sanitation District's lobbyist has agreed.]

- b. *New funding for wastewater treatment part II.* Delta Counties also asked for additional funding to upgrade sewage treatment plants to reduce or clean up discharges in the Delta. I have advocated tens of millions of dollars in additional funding for wastewater treatment upgrades in any water financing package.

These funds could be used by all of the Delta counties to upgrade existing sewage and wastewater treatment facilities to help reduce any harmful pollution discharges into the Delta. [SB 3-7x (Steinberg)—page 9, lines 18-24]

- c. *New legally binding assurances for full compensation for lost property tax revenue due to lands taken for conveyance and associated ecosystem restoration.* Delta counties requested new provisions in law that guarantee replacement of any local property taxes lost due to construction of new conveyance and associated conversion of farmland into ecosystem restoration land. The comprehensive policy bill contains language providing this assurance. (SB 4-7x—page 95, lines 20-34).

It should be noted that the purchase of lands for ecosystem restoration is an ongoing process and not limited exclusively for conveyance mitigation purposes. It also should be noted that any property taxes lost from the conversion of those lands is more than offset by the hundreds of millions of new funding for the Delta Counties contained elsewhere in the package.

- d. *New legally binding assurances in law for compensation for full mitigation of any adverse effects associated with construction or operation of any through-Delta conveyance.* Delta counties expressed concerns that new decisions in the Delta made to provide water supply reliability and ecosystem restoration should be undertaken only if Delta counties are provided full mitigation of any adverse effects from those decisions.

The policy bill contains language that expressly prohibits the construction or operation of any new canal or conveyance facility unless the parties receiving that water have a legally binding agreement to pay for the costs of the environmental review, planning, design, construction, mitigation, and operation and maintenance of any new facilities. (SB 4-7x, page 99, lines 26-30)

- e. *New funding for Delta county economic development, water supply, and infrastructure investment.* Delta counties also requested new funds for economic investment and new infrastructure within the Delta region. I have worked to ensure hundreds of millions of dollars are available for these purposes in the financing package. (NOTE: these dollars are in great jeopardy due to opposition from the Administration based on continued opposition from Delta counties, despite this allocation). (SB 3-7x—page 8, lines 28-39)

- f. *New funding for Delta levee repairs and upgrades.* Delta counties requested new funding to help repair or replace aging Delta levees such as those around Jones Tract that are in serious danger of collapse. I have worked to obtain millions of dollars in funding from Proposition 1-E to help Delta counties repair and replace levees in the Delta.
- g. *New funding for water conservation, water efficiency, clean drinking water.* Delta and Sacramento region local governments have expressed concern about new requirements in the package to promote clean drinking water, greater water efficiency, and water conservation, and that these changes could lead to rate increases. I have worked to secure new funding in the financing package to provide water conservation, water efficiency, or clean water requirements. (SB 3-7x—page 6, lines 15-39)

2. *Increased Sacramento/Delta Regional Representation on New Governance Boards.*

Delta and Sacramento regional governments have asked that they be provided with strong representation, both in membership and in formal input mechanisms, on any new Delta governance structures created by the comprehensive water package.

In response to these concerns I have advocated the following changes to the legislative package to ensure robust representation for the Delta and Sacramento region:

- a. *Increased Representation on Delta Protection Commission.* The revisions to the DPC increase local representation and eliminate state agencies and others currently members of the Commission. At the same time, and in response to West Sacramento Mayor Cabaldon, the legislation has been amended to ensure the city may continue to have representation on the Commission.
- b. *Strong local and regional representation on new Delta Conservancy.* The legislation creating the new Delta Conservancy ensures that no fewer than 5 of the 11 members of the new Delta Conservancy will be local government representatives from Delta counties to ensure the Delta's voice in land acquisition or ecosystem restoration is strong.
- c. *Permanent seat for Delta Protection Commission Chair on Delta Stewardship Council and potential for additional Delta representation.* The new Delta Stewardship Council will, by law, ensure that the Chair of the DPC (a Delta county supervisor) will be a permanent member of the council. In addition, since the Senate, Assembly and Governor all have additional appointments to the seven member board, there are clear opportunities for additional Delta members to be appointed.
- d. *Explicit requirement that Delta Stewardship Council consider local and regional input and incorporate into Delta plan.* I have advocated language in the legislation that requires the new DSC to take under consideration any comments from the DPC and to accept them if they are consistent with the Delta plan.

3. *Other adjustments and accommodations made for Sacramento and Delta regional agencies to provide greater flexibility for locals.*

- a. *New “path 4” for our region’s water agencies and greater flexibility in meeting Governor’s “20% by 2020” water conservation targets.* Several of our regional water agencies (i.e. Placer County, Citrus Heights, Sacramento) have expressed strong concerns that the new “20% by 2020” water conservation targets contained in the comprehensive water package are too stringent for their agencies to meet.

I have reviewed their concerns with the authors and sponsors of those bills, and pushed for changes that provide the following new flexibility for our agencies: the bills now provide a new “path 4” for water conservation compliance to be developed by the Department of Water Resources in recognition of the fact that inland suburban water agencies have different water use profiles than coastal urban areas. The new path will take into account factors such as climate, parcel size and other considerations requested by our agencies.

Moreover, the legislation now states that if a local or regional agency merely has submitted to DWR a schedule, financing plan, and budget in furtherance of the “20% by 2020” target, it is eligible to receive a state water grant or loan to help achieve the per capita reductions.

Finally, it should be noted that the only sanction for failure to comply with the new requirements is loss of eligibility for any state water management grants or loans. There are no civil or criminal penalties for failure to comply.

- b. *Greater local control over land use determinations in Delta secondary zone.* SACOG and others have expressed concern over the Delta Vision recommendation that actions taken by local governments within the secondary zone of the Delta be subject to review and consistency determination by the new Delta Stewardship Council.

With the help of Mike McKeever, SACOG’s Executive Director, and Kirk Trost, the council’s outstanding outside counsel, I’m pleased to report that we have negotiated language that SACOG assures us preserves the appropriate local control over land use decisions in the Delta secondary zone.

- c. *Statutory assurances that regional water rights and entitlements will be protected.*

Our local and regional water agencies have expressed strong concern that their existing and legally enforceable water rights, area of origin, and county of origin protections be unaffected in any manner by the new Delta legislation.

I have ensured that the legislation will contain a sweeping “savings clause” that states the following:

***“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.”*

To be sure, no legislation is perfect. However, taken together, the comprehensive water package itself along with this list of key concessions and changes to address our region’s concerns, represents a significant advance in water policy for the state and for our constituents.

I hope this letter responds to the concerns raised by SACOG and others and look forward to working with you on this important issue.

Sincerely,

A handwritten signature in black ink that reads "Darrell Steinberg". The signature is written in a cursive, flowing style with a large, sweeping flourish at the end.

**DARRELL STEINBERG**  
President pro Tempore of the Senate

Cc: SACOG Board members  
Mike McKeever, Executive Director

## 2009 Delta/Water Legislation 7<sup>th</sup> Extraordinary Session

### Assembly Bills

<b>Bill #</b>	<b>Author</b>	<b>Contents</b>
6	De León	Elimination of Delta Water Diversion Reporting Exemptions
7	Caballero	Water Bond (Vehicle)
8	Feuer- Huffman	Water Conservation
9	Bass	Delta Protection Commission Reform Delta Conservancy
10	Bass	Groundwater Elevation Monitoring
11	Bass	Water Rights Enforcement Tools
12	Bass	Delta Governance & Delta Plan
14	Caballero	Water Bond

### Senate Bills

<b>Bill #</b>	<b>Author</b>	<b>Contents</b>
1	Simitian- Steinberg	Delta Governance & Plan - DPC, Conservancy, Council, Watermaster, Plan
2	Cogdill	Water Bond
3	Steinberg	Water Bond
4	Steinberg	Single Bill Compilation of All 2009 Delta-Water Policy Legislation
5	Steinberg	Water Rights Enforcement Tools (including appropriation for additional water rights enforcement personnel)
6	Steinberg	Groundwater Elevation Monitoring
7	Steinberg	Water Conservation



September 11, 2009

The Honorable Darrell Steinberg  
State Capitol, Room 205  
Sacramento, CA 95814

The Honorable Karen Bass  
State Capitol, Room 219  
Sacramento, CA 95814

**Subject: Oppose Unless Amended: Delta/Water Legislation Threatens Local Control**

Dear Pro Tem Steinberg and Speaker Bass:

The Sacramento Area Council of Governments **opposes unless amended** the bills approved by the conference committee. In addition to our principles articulated on Wednesday (attached), the following concerns need to be addressed:

SB 12 would give Delta Stewardship Council (DSC) control over almost any significant issue decided by the cities of Sacramento, West Sacramento and Isleton and the county of Sacramento, even though they are in the secondary zone, over which the Delta Protection Commission (DPC) does not currently have binding authority. This control would not just mean state control and reversal power over open space land use decisions near the Delta, but would cover brownfield projects, bridges and highways, urban stormwater, levees, and other key local decisions. This goes against our principle of local representation. **SB 12 should be amended to limit DSC's "covered actions" authority to the primary zone.**

SB 458 takes away SACOG's ability to appoint a city representative to the (DPC). This would force the rotation of the city representative between Sacramento and West Sacramento. It would also prohibit any city representative from ever serving as DPC chair—the only official from the SACOG region who will serve on the DSC. **SB 458 should be amended to restore the appointing authority for the DPC to the three councils of government, and remove the proposed rotation requirement and exclusion of city representatives from the DPC chairmanship.**

We remain concerned by the speed at which this legislation is moving, and continue to urge you to hold a special session to ensure a successful outcome.

Sincerely,

Mike McKeever  
Executive Director

cc: Conference Committee Members  
Sacramento Region Legislative Delegation



September 9, 2009

The Honorable Darrell Steinberg  
State Capitol, Room 205  
Sacramento, CA 95814

The Honorable Karen Bass  
State Capitol, Room 219  
Sacramento, CA 95814

**Subject: SACOG Principles on Water**

Dear Pro Tem Steinberg and Speaker Bass:

As you know, the Sacramento region has a lot at stake in the water legislation currently before the conference committee. The future cost and availability of water in this region will strongly influence the rate and shape of future growth, and the resulting travel behavior and air emissions, including greenhouse gases. Our Blueprint project documented how smart growth development patterns will dramatically reduce future urban water demand. Our current Rural-Urban Connections Strategy is examining how to ensure long-term economic viability for agricultural and other rural land uses. Water is central to smart growth and the continuity of agriculture in the Sacramento region.

The region's ability to successfully implement our groundbreaking, integrated regional plans, and to comply with new state policies (i.e., SB 375 and AB 32) and emerging federal policies (i.e., energy and climate legislation, and transportation authorization) influencing transportation funding priorities, is potentially strongly affected by the resolution of this critical water planning issue in our state.

The speed at which this Delta legislation is moving greatly concerns representatives of cities and counties in the SACOG region. Our regional planning successes are largely built by developing regional consensus to address land use and resource issues in an approach that is integrated with benefits to energy, water and other natural resource conservation. Given the complexities of the Delta issues and the myriad of interests involved, the risk of unintended consequences by moving this legislation in the few remaining hours of this legislative session is extremely high. SACOG encourages the committee to extend the timeframe for crafting bills so that all stakeholders may properly review the language. Perhaps a special session on "Delta – Water" would be most appropriate for a successful outcome.

But, should the Legislature continue forward, we ask that, at a minimum, it does so consistent with the following five principles:

First, representatives of affected SACOG cities and counties should be voting members of all the governing bodies for the Delta.

Second, water supply reliability and quality should be protected for residents of the SACOG region as much as for any other Californians.

uburn  
Citrus Heights  
Colfax  
Davis  
Dorado County  
Elk Grove  
Eolsom  
Elt  
leton  
ncoln  
ve Oak  
omis  
aysville  
acer County  
acerville  
ncho Cordova  
cklin  
seville  
acramento  
acramento County  
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eatland  
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odland  
a County  
a City  
a County

Third, a comprehensive Delta program—with a guaranteed funding stream—should be developed that fairly and completely deals with all Delta issues, including providing mitigation funds for SACOG communities that are harmed by proposed changes for the Delta.

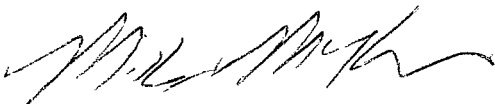
Fourth, agriculture should be recognized as a critical part of our region's economy, and our state and national food supply security. Annually, the SACOG region produces over 3.4 million tons of food worth more than \$1.3 billion. There are also agriculture support and processing industries worth hundreds of millions of dollars of economic activity in this region. Agricultural interests involved in the Rural-Urban Connections Strategy project have voiced concerns about existing rights, reliability, and cost of water in this region as supply is critical to sustaining California's agricultural viability. Concerns have also been raised about losing agricultural lands for habitat mitigation in this process.

Fifth, the Water Forum provides a viable option for achieving water conservation and efficiency. Over several years, this innovative, collaborative effort brought together 40 interests, including water purveyors, environmentalists, agriculturalists, business leaders, and local governments in Sacramento, El Dorado and Placer counties. Each water supplier in the region also committed to implementing a comprehensive water conservation and efficiency plan and preparing annual reports to chronicle their progress. Any legislation should ensure that this plan in this region can be a model for our water conservation and efficiency efforts.

Just as SB 375 was modeled on the voluntary Blueprint in the Sacramento region, the Water Forum provides a model for a bottom-up approach to achieving water conservation and efficiency. The Water Forum model should be used as an alternative path to meeting statewide goals. Further, the Water Forum has shown conservation and efficiency results, so purveyors should be credited for improvements already in place.

Thank you for your consideration of our concerns and interests on this critical issue.

Sincerely,



Mike McKeever  
Executive Director

MM:DS:EJ:sb

cc: Conference Committee Members  
Sacramento Region Legislative Delegation

### **Wastewater Treatment Facility Mitigation**

**Issue: Ensure that mitigation funding is available for any improvements to the Sacramento Regional Sanitation District wastewater treatment facility required due to implementation of the Delta Plan conveyance and ecosystem restoration objectives.**

***(Issue raised at the Oct. 5 GRAPA meeting.)***

#### Steinberg Letter

1. a. *New funding for wastewater treatment part 1:* Sacramento County asked for a new and explicit requirement in law that any party proposing to build through-Delta conveyance fully mitigate the effects of that conveyance, including any mitigation and costs associated with upgrading the Sacramento Regional Sanitation Agency waste water treatment plant. I have secured this language in the bill as agreed upon by the representatives of the district and the supporters of the legislation. [SB 4-7x (Steinberg)—page 95, lines 20-34—NOTE: one word change requested by parties on this to which the Sanitation District’s lobbyist has agreed.]

#### Analysis

The Sacramento Regional Sanitation District requested amendments to address mitigation for impacts to any public facility or improvement due to the construction or operation of any new Delta water conveyance facilities. Such an amendment would address concerns that Delta conveyance could result in significant costs to the Sanitation District for improvements needed to meet new water quality and flow standards. Section 85089 of the policy bill now requires that water export entities “have made arrangements or entered into contracts to pay for both of the following: (a) The costs of the environmental review, planning, design, construction, and mitigation, including mitigation required pursuant to Division 13 (commencing with Section 21000 of the Public Resources Code), required for the construction, operation, and maintenance of any new Delta water conveyance facility.” Sen. Steinberg’s staff has advised us that additional minor amendments will be made to the bill to address the Sanitation District’s concerns.

#### SBX7 4 or SBX7 1(Policy Bills)

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 both of the following:

(a) The costs of the environmental review, planning, design, construction, mitigation, and operation and maintenance of any new Delta water conveyance facility. The costs of mitigation include the costs of mitigation pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code in connection with the construction, 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.

## Steinberg Letter

1. b. *New funding for wastewater treatment part II.* Delta Counties also asked for additional funding to upgrade sewage treatment plants to reduce or clean up discharges in the Delta. I have advocated tens of millions of dollars in additional funding for wastewater treatment upgrades in any water financing package.

These funds could be used by all of the Delta counties to upgrade existing sewage and wastewater treatment facilities to help reduce any harmful pollution discharges into the Delta. [SB 3-7x (Steinberg)—page 9, lines 18-24]

## Analysis

Sen. Steinberg's version of the bond bill makes \$200,000,000 available in matching grants specifically for wastewater treatment facility improvements, while Sen. Cogdill's bill includes \$50,000,000 for such purposes.

### SBX7 3 (Steinberg Bond Bill)

79731 (a)(2) Of the funds provided in this subdivision, not less than two hundred million dollars (\$200,000,000) shall be available for matching grants for improvements to wastewater treatment facilities upstream of the Delta to improve Delta water quality and not less than six million dollars(\$6,000,000) shall be available for the design, permitting, and construction of wastewater facilities to promote tourism and sustainable agriculture in the north Delta.

### SBX7 2 (Cogdill Bond Bill)

79731(a)(2) Of the funds provided in this subdivision, not less than fifty million dollars (\$50,000,000) shall be available for matching grants for improvements to wastewater treatment facilities upstream of the Delta to improve Delta water quality.

## **Property Tax Mitigation**

**Issue: Ensure that mitigation funding is made available to offset the loss of property tax revenue due to lands taken for conveyance facilities and ecosystem restoration projects that are part of the Delta Plan.**

***(Issue raised at the Oct. 5 GRAPA meeting.)***

### Steinberg Letter

1. c. *New legally binding assurances for full compensation for lost property tax revenue due to lands taken for conveyance and associated ecosystem restoration.* Delta counties requested new provisions in law that guarantee replacement of any local property taxes lost due to construction of new conveyance and associated conversion of farmland into ecosystem restoration land. The comprehensive policy bill contains language providing this assurance. (SB 4-7x—page 95, lines 20-34).

It should be noted that the purchase of lands for ecosystem restoration is an ongoing process and not limited exclusively for conveyance mitigation purposes. It also should be noted that any property taxes lost from the conversion of those lands is more than offset by the hundreds of millions of new funding for the Delta Counties contained elsewhere in the package.

1. d. *New legally binding assurances in law for compensation for full mitigation of any adverse effects associated with construction or operation of any through-Delta conveyance.* Delta counties expressed concerns that new decisions in the Delta made to provide water supply reliability and ecosystem restoration should be undertaken only if Delta counties are provided full mitigation of any adverse effects from those decisions.

The policy bill contains language that expressly prohibits the construction or operation of any new canal or conveyance facility unless the parties receiving that water have a legally binding agreement to pay for the costs of the environmental review, planning, design, construction, mitigation, and operation and maintenance of any new facilities. (SB 4-7x, page 99, lines 26-30)

[Note: SACOG staff believes that the foregoing citation is incorrect and should reference page 95, lines 20-34.]

### Analysis

The provisions of section 85089 focus on mitigation, and in subsection (b) property tax mitigation specifically, for impacts related to the construction of a new Delta conveyance facility. This section states that all costs associated with the construction, operation, and maintenance of a new facility will be the responsibility of those receiving water from the new conveyance facility (otherwise known as “contractors” or “exporters”).

Therefore, funding for these costs is not contingent upon approval of bonds. The amount of land needed for mitigation of new conveyance impacts will depend on whether the conveyance facility is a canal or a tunnel, an eastern or western alignment, and the mitigation ratio for impacts. Local jurisdictions would receive property tax

mitigation for lands used in the construction and operation of a new conveyance facility or converted from farmland to habitat as a result of environmental mitigation for new conveyance projects included in the Delta Plan. The bill does not explicitly provide for property tax mitigation for lands converted to habitat for activities unrelated to conveyance. The bond bill does provide new sources of funding for Delta counties.

SBX7 4 or SBX7 1 (Policy Bills)

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 both of the following:

(a) The costs of the environmental review, planning, design, construction, mitigation, and operation and maintenance of any new Delta water conveyance facility. The costs of mitigation include the costs of mitigation pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code in connection with the construction, 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.

## **Economic Development in the Delta**

**Issue: Secure funding for economic development, levee improvements, and for investments needed to implement water efficiency requirements.**

***(Issue raised at the Oct. 5 GRAPA meeting.)***

### Steinberg Letter

1. e. *New funding for Delta county economic development, water supply, and infrastructure investment.* Delta counties also requested new funds for economic investment and new infrastructure within the Delta region. I have worked to ensure hundreds of millions of dollars are available for these purposes in the financing package. (NOTE: these dollars are in great jeopardy due to opposition from the Administration based on continued opposition from Delta counties, despite this allocation). (SB 3-7x—page 8, lines 28-39)

### Analysis

Sen. Steinberg's bond bill includes \$1 billion in funding for agricultural economic development and other economic activities in the Delta. Funding outlined in this section of the bill also may be used for various infrastructure projects, including levee and flood control improvements, and for mitigation of impacts of water conveyance and ecosystem restoration, though property tax mitigation is not specified. Sen. Cogdill's bill has similar provisions, but makes \$500,000,000 available.

#### SBX7 3 (Steinberg Bond Bill)

79731. The sum of three billion dollars (\$3,000,000,000) shall be available, upon appropriation from the fund, for grants and direct expenditures, as follows:

- (a) (1) One billion dollars (\$1,000,000,000) for projects, including grants to Delta counties and cities within the Delta, that provide public benefits and support Delta sustainability options, including projects and supporting scientific studies and assessments that do any of the following:
  - (A) Ensure that urban and agricultural water supplies derived from the Delta, including water supplies used within the Delta, are not disrupted because of catastrophic failures of Delta levees resulting from earthquakes, floods, land sinking, rising ocean levels, or other forces.
  - (B) Assist in preserving economically viable and sustainable agriculture and other economic activities in the Delta.
  - (C) Improve the quality of drinking water derived from the Delta.
  - (D) Improve levee and flood control facilities and other vital infrastructure necessary to protect Delta communities affected by the implementation of this chapter.
  - (E) Provide physical improvements or other actions to create water flow and water quality conditions within the Delta to provide adequate habitat for native fish and wildlife.
  - (F) Facilitate other projects that provide public benefits and support Delta sustainability options approved by the Legislature, including costs associated with planning, monitoring, and design of alternatives, and project modifications and adaptations necessary to achieve the goals of this chapter.
  - (G) Mitigate other impacts of water conveyance and ecosystem restoration.
  - (H) Provide or improve water quality facilities and other infrastructure.

SBX7 2 (Cogdill Bond Bill)

79731. The sum of two billion dollars (\$2,000,000,000) shall be available, upon appropriation from the fund, for grants and direct expenditures, as follows:

- (a) (1) Five hundred million dollars (\$500,000,000) for projects, including grants to Delta counties and cities within the Delta, that provide public benefits and support Delta sustainability options, including projects and supporting scientific studies and assessments that do any of the following:
  - (A) Ensure that urban and agricultural water supplies derived from the Delta, including water supplies used within the Delta, are not disrupted because of catastrophic failures of Delta levees resulting from earthquakes, floods, land sinking, rising ocean levels, or other forces.
  - (B) Assist in preserving economically viable and sustainable agriculture and other economic activities in the Delta.
  - (C) Improve the quality of drinking water derived from the Delta.
  - (D) Improve levee and flood control facilities and other vital infrastructure necessary to protect Delta communities affected by the implementation of this chapter.
  - (E) Provide physical improvements or other actions to create water flow and water quality conditions within the Delta to provide adequate habitat for native fish and wildlife.
  - (F) Facilitate other projects that provide public benefits and support Delta sustainability options approved by the Legislature, including costs associated with planning, monitoring, and design of alternatives, and project modifications and adaptations necessary to achieve the goals of this chapter.
  - (G) Mitigate other impacts of water conveyance and ecosystem restoration.
  - (H) Provide or improve water quality facilities and other infrastructure.

Steinberg Letter

- 1. f. *New funding for Delta levee repairs and upgrades.* Delta counties requested new funding to help repair or replace aging Delta levees such as those around Jones Tract that are in serious danger of collapse. I have worked to obtain millions of dollars in funding from Proposition 1-E to help Delta counties repair and replace levees in the Delta.

Analysis

In addition to the bond funds noted above, Sen. Steinberg's bond bill would carve out \$200,000,000 from 2007 proposition 1-E bond funds for levee improvements in the Delta. These funds could be used throughout the central valley for levee and flood control purposes; this bill identifies the maximum project amount and specifies its use for Delta levee improvements. Sen. Cogdill's bond bill does not dedicate any specific levee funding, but includes levee and flood control projects as one of a number of various infrastructure, economic development, and mitigation projects on which \$500,000,000 may be spent.

SBX7 3 (Steinberg Bond Bill)

SEC. 3. The sum of two hundred million dollars (\$200,000,000) is hereby appropriated from the funds made available by Section 5096.821 of the Public Resources Code to the Department of Water Resources for flood protection projects in the Delta. The department shall expedite the evaluation of

nonurban levees on the west bank of the Sacramento River including those for Clarksburg and Knights Landing and consider a joint project with local government agencies for improving the Yolo Bypass as a multibenefit flood control facility, including support of multibenefit flood control alternatives for tributaries to the Yolo Bypass.

SBX7 2 (Cogdill Bond Bill)

79731. The sum of two billion dollars (\$2,000,000,000) shall be available, upon appropriation from the fund, for grants and direct expenditures, as follows:

- (a) (1) Five hundred million dollars (\$500,000,000) for projects, including grants to Delta counties and cities within the Delta, that provide public benefits and support Delta sustainability options, including projects and supporting scientific studies and assessments that do any of the following:
  - (A) Ensure that urban and agricultural water supplies derived from the Delta, including water supplies used within the Delta, are not disrupted because of catastrophic failures of Delta levees resulting from earthquakes, floods, land sinking, rising ocean levels, or other forces.
  - (B) Assist in preserving economically viable and sustainable agriculture and other economic activities in the Delta.
  - (C) Improve the quality of drinking water derived from the Delta.
  - (D) Improve levee and flood control facilities and other vital infrastructure necessary to protect Delta communities affected by the implementation of this chapter.
  - (E) Provide physical improvements or other actions to create water flow and water quality conditions within the Delta to provide adequate habitat for native fish and wildlife.
  - (F) Facilitate other projects that provide public benefits and support Delta sustainability options approved by the Legislature, including costs associated with planning, monitoring, and design of alternatives, and project modifications and adaptations necessary to achieve the goals of this chapter.
  - (G) Mitigate other impacts of water conveyance and ecosystem restoration.
  - (H) Provide or improve water quality facilities and other infrastructure.

Steinberg Letter

1. g. *New funding for water conservation, water efficiency, clean drinking water.* Delta and Sacramento region local governments have expressed concern about new requirements in the package to promote clean drinking water, greater water efficiency, and water conservation, and that these changes could lead to rate increases. I have worked to secure new funding in the financing package to provide water conservation, water efficiency, or clean water requirements. (SB 3-7x—page 6, lines 15-39)

Analysis

Both Sen. Steinberg's (\$300,000,000) and Sen. Cogdill's (\$400,000,000) bond bills provide funding for drought relief that includes projects to promote conservation, efficiency and clean drinking water. Sen. Cogdill's bill goes a step further, providing \$250,000,000 for conservation and efficiency programs or investments that are not limited to drought relief, and specifically calling out agricultural water management plan development and efficiency programs and projects.

SBX7 3 (Steinberg Bond Bill)

79726. (a) Of the funds provided in Section 79725, the sum of three hundred million dollars (\$300,000,000) shall be available, upon appropriation by the Legislature from the fund, to the department for grants and direct expenditures for the planning, design, and construction of local and regional drought relief projects that reduce the impacts of drought conditions, including, but not limited to, the impacts of reductions in Delta diversions. Projects shall be consistent with an adopted integrated regional water management plan. Eligible projects include all of the following:

- (1) Water conservation and efficiency projects, including installation of water efficiency fixtures.
- (2) Water recycling and related infrastructure.
- (3) Groundwater cleanup.
- (4) Local and regional conveyance projects that improve water supplies and public benefits associated with conveyance facilities.
- (5) Other local and regional water supply reliability projects.

(b) Projects funded pursuant to this section shall meet both of the following requirements:

- (1) The project will provide a sustainable water supply that does not contribute to groundwater overdraft or increase surface water diversions.
- (2) The project is capable of being operational within two years of receiving the grant.

(c) Preference shall be given to applicants that can demonstrate substantial past and current investments in conservation and local water projects.

(d) Not more than 10 percent of the funds provided by this section shall be available for planning, investigations, studies, and monitoring.

(e) The department shall require a cost share of not less than 50 percent of total project costs from nonstate sources. The department may waive or reduce the cost share requirement for projects that directly benefit disadvantaged communities.

(f) Of the funds provided in this section, not less than one hundred million dollars (\$100,000,000) shall be available for grants to disadvantaged communities experiencing economic impacts from drought and from disruptions in delivery from the State Water Project and the federal Central Valley Project.

SBX7 2 (Cogdill Bond Bill)

79724. (a) The sum of four hundred million dollars (\$400,000,000) shall be available, upon appropriation by the Legislature from the fund, to the department for grants and direct expenditures for the planning, design, and construction of local and regional drought relief projects that reduce the impacts of drought conditions, including, but not limited to, the impacts of reductions in Delta diversions. Projects shall be consistent with an adopted integrated regional water management plan and include any of the following types of projects:

- (1) Water conservation and efficiency projects, installation of water efficiency fixtures.
- (2) Water recycling and related infrastructure.
- (3) Stormwater capture.
- (4) Groundwater cleanup.
- (5) Local and regional conveyance projects that including improve connectivity and water management.
- (6) Other local and regional water supply reliability projects.

(b) Projects funded pursuant to this section shall meet both of the following

conditions:

- (1) The project shall provide a sustainable water supply that does not contribute to groundwater overdraft or increase surface water diversions.
- (2) The project shall be capable of being operational within two years of receiving the grant.
- (c) Preference shall be given to applicants that can demonstrate substantial past and current investments in conservation and local water projects.
- (d) Not more than 10 percent of the funds provided by this section shall be available for planning, investigations, studies, and monitoring.
- (e) The department shall require a cost share of not less than 50 percent of total project costs from nonstate sources. The department may waive or reduce the cost share requirement for projects that directly benefit disadvantaged communities or economically distressed areas.
- (f) Of the funds provided in this section, not less than fifty million dollars (\$50,000,000) shall be available for grants to disadvantaged communities and economically distressed areas experiencing economic impacts from drought and from disruptions in delivery from the State Water Project and the federal Central Valley Project.

79784. (a) (1) The sum of two hundred fifty million dollars(\$250,000,000) shall be available, upon appropriation by the Legislature from the fund, for direct expenditures, grants, and loans for water conservation and water use efficiency projects and programs, including any of the following:

- (A) Urban water conservation projects and programs, including regional projects and programs, implemented pursuant to Part 2.55 (commencing with Section 10608). Priority for funding shall be given to programs that do the following:
  - (i) Assist water suppliers and regions to implement conservation programs and measures that are not locally cost-effective.
  - (ii) Support water supplier and regional efforts to implement programs targeted to enhance water use efficiency for commercial, industrial, and institutional water users.
  - (iii) Assist water suppliers and regions with programs and measures targeted toward realizing the conservation benefits of implementation of the provisions of the state landscape model ordinance.
- (B) Agricultural water use efficiency projects and programs pursuant to Part 2.8 (commencing with Section 10800).
- (C) Agricultural water management plans developed pursuant to Part 2.8 (commencing with Section 10800).

## **Delta Governance and Local Representation**

**Issue: Restore city representation process for the Delta Protection Commission. Remove prohibition on city representation on the Delta Stewardship Council. Ensure strong representation from local jurisdictions on Delta governing bodies. (Issue raised in Sept. 9 and Sept. 11 letters, and at the Oct. 5 GRAPA meeting.)**

### Steinberg Letter

2. a. *Increased Representation on Delta Protection Commission.* The revisions to the DPC increase local representation and eliminate state agencies and others currently members of the Commission. At the same time, and in response to West Sacramento Mayor Cabaldon, the legislation has been amended to ensure the city may continue to have representation on the Commission.

### Analysis

The language for the selection of a city representative from the SACOG region on the Delta Protection Commission has been reverted to existing language in statute. This removes the language requiring rotation of a city representative between the Cities of Sacramento and West Sacramento. A representative would be appointed by a city selection committee at SACOG. This change meets the some of the requests sought by SACOG, though the bill still includes a two-year term limit for city representative positions. SACOG also sought to remove the prohibition on a city representative from serving as chair of the DPC. The bill still says that the chair of the DPC would be selected from one of the five Delta county supervisors and would be a voting member of the Delta Stewardship Council.

### SBX7 4 or SBX7 1 (Policy Bills)

29735. There is hereby created the Delta Protection Commission consisting of 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 whose supervisorial district is within the primary zone shall be appointed by the board of supervisors of each of those respective counties.
- (b) (1) Two elected city council members shall be selected and appointed by city selection committees, from the appropriate regions specified in subparagraphs (A) and (B), one in each of the following areas:
  - (A) One from the south Delta, consisting of the County of San Joaquin.
  - (B) One from the west Delta, from either the County of Contra Costa or the County of Solano, on a rotating basis.
- (2) One elected city council member shall be selected and appointed by city selection committees, from regional and area councils of government from the north Delta, consisting of the Counties of Yolo and Sacramento.
- (3) A city council member appointed pursuant to this subdivision may select a designee for purposes of this subdivision.
- (4) Notwithstanding Section 29736, the term of office of the members selected pursuant to this subdivision shall be two years.

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

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.

### Steinberg Letter

2. b. *Strong local and regional representation on new Delta Conservancy.* The legislation creating the new Delta Conservancy ensures that no fewer than 5 of the 11 members of the new Delta Conservancy will be local government representatives from Delta counties to ensure the Delta's voice in land acquisition or ecosystem restoration is strong.

### Analysis

Five of the eleven members of the Delta Conservancy board will be Delta representatives. There could be even more Delta representation depending on appointments by the Governor and Legislature.

### SBX7 4 or SBX7 1 (Policy Bills)

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.  
(d) The public members 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 or 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.

### Steinberg Letter

2. c. *Permanent seat for Delta Protection Commission Chair on Delta Stewardship Council and potential for additional Delta representation.* The new Delta Stewardship Council will, by law, ensure that the Chair of the DPC (a Delta county supervisor) will be a permanent member of the council. In addition, since the Senate, Assembly and Governor all have additional appointments to the seven member board, there are clear opportunities for additional Delta members to be appointed.

### Analysis

The Delta Stewardship Council would have at least one representative from the Delta by way of the required appointment of the DPC chair to the DSC. Additional Delta representation may be included on the DSC depending on appointments by the Governor and Legislature.

### SBX7 4 or SBX7 1 (Policy Bills)

85200(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.

### Steinberg Letter

2. d. *Explicit requirement that Delta Stewardship Council consider local and regional input and incorporate into Delta plan.* I have advocated language in the legislation that requires the new DSC to take under consideration any comments from the DPC and to accept them if they are consistent with the Delta plan.

### Analysis

The bill sections below outline a process by which the DPC would develop a proposal to protect, enhance, and sustain the Delta as an evolving place. The proposal may include elements of the "Strategic Plan," which includes both the "Delta Vision Strategic Plan" issued by the Delta Vision Blue Ribbon Task Force and the "Delta Vision Implementation Report" adopted by the Delta Vision Committee. There is also reference to the DPC's Resource Management Plan, for consideration in the Delta Plan. The bill provides that the DPC proposal is for "consideration and incorporation into the Delta Plan," and that the Council "shall consider the proposal" and may, in its discretion, include any portion of the proposal in the Delta Plan. Some have asserted that "consider" is not strong enough language to ensure that local issues addressed by the DPC are included in the Delta Plan.

SBX7 4 or SBX7 1 (Policy Bills)

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.

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 if the council, in its discretion, determines that the portion of the proposal is feasible and consistent with the objectives of the Delta Plan and the purposes of this division.

## Water Conservation

**Issue: Expand options for local water use efficiency and conservation plans to set and meet water use targets. Consider regional differences in factors such as population density, land use, and climate in setting per capita water conservation targets.**

***(Issue raised in Sept. 9 letter and at the Oct. 5 GRAPA meeting.)***

### Steinberg Letter

3. a. *New “path 4” for our region’s water agencies and greater flexibility in meeting Governor’s “20% by 2020” water conservation targets.* Several of our regional water agencies (i.e. Placer County, Citrus Heights, Sacramento) have expressed strong concerns that the new “20% by 2020” water conservation targets contained in the comprehensive water package are too stringent for their agencies to meet.

I have reviewed their concerns with the authors and sponsors of those bills, and pushed for changes that provide the following new flexibility for our agencies: the bills now provide a new “path 4” for water conservation compliance to be developed by the Department of Water Resources in recognition of the fact that inland suburban water agencies have different water use profiles than coastal urban areas. The new path will take into account factors such as climate, parcel size and other considerations requested by our agencies.

Moreover, the legislation now states that if a local or regional agency merely has submitted to DWR a schedule, financing plan, and budget in furtherance of the “20% by 2020” target, it is eligible to receive a state water grant or loan to help achieve the per capita reductions.

Finally, it should be noted that the only sanction for failure to comply with the new requirements is loss of eligibility for any state water management grants or loans. There are no civil or criminal penalties for failure to comply.

### Analysis

The policy bill now includes a fourth path, as noted. One of SACOG’s principles is that the state recognize a region’s efforts in water conservation and provide credit for improvements already in place. The current language for the fourth path requires DWR, when setting water conservation targets, to consider various regional differences, such as climate and population density, and to avoid an undue hardship on communities implementing conservation measures. Water suppliers may report their progress on achieving targets on either an individual or regional basis. This regional option may be useful to members of the Water Forum since they may receive consideration for current conservation efforts in achieving targets for the region.

Some have argued that it is not clear that if a region elects to use the fourth path, its conservation targets will not exceed 20 percent. The cumulative statewide conservation target is 20 percent and coastal regions may only have to achieve a 5 percent target.

This may place a higher burden (possibly more than 20 percent) on inland parts of the state in order to achieve the statewide conservation objective.

The new bill has provisions that even if a water agency does not meet its water conservation targets, it still may be eligible for funding from the state if DWR approves "a schedule, financing plan, and budget, to be included in the grant or loan agreement, for achieving the per capita reductions." If DWR does not make that determination, the agency is no longer eligible for state funding if it is not meeting its targets.

SBX7 4 or SBX7 7 (Policy Bills)

10608.8. (a) (1) Water use efficiency measures adopted and implemented pursuant to this part or Part 2.8 (commencing with Section 10800) are water conservation measures subject to the protections provided under Section 1011.

~~(2) An urban water supplier's failure to meet the per capita targets established in Section 10608.20 shall not be evidence of waste or unreasonable use under Section 2 of Article X of the California Constitution or Section 100. Nothing in this paragraph limits the use of data reported to the department or the board in litigation or an administrative proceeding. This paragraph shall become inoperative on January 1, 2020.~~

*(2) Because an urban agency is not required to meet its urban water use target until 2020 pursuant to subdivision (b) of Section 10608.24, an urban retail water supplier's failure to meet those targets shall not establish a violation of law for purposes of any state administrative or judicial proceeding prior to January 1, 2021. Nothing in this paragraph limits the use of data reported to the department or the board in litigation or an administrative proceeding. This paragraph shall become inoperative on January 1, 2021.*

10608.20. (a)(1) Each urban retail water supplier shall develop urban water use targets and an interim urban water use target by July 1, 2011. 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 December 31, 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.

(4) A method that shall be identified and developed by the department, through a public process, and reported to the Legislature no later than December 31, 2010. The method developed by the department shall identify per capita targets that cumulatively result in a statewide 20 percent reduction in urban daily per capita water use by December 31, 2020. ~~If the department does not adopt a method pursuant to this paragraph, the urban retail water supplier shall adopt a method described in paragraph (1), (2), or (3).~~ In developing urban daily per capita water use targets, the department shall do all of the following:

(A) Consider climatic differences within the state.

(B) Consider population density differences within the state.

(C) Provide flexibility to communities and regions in meeting the targets.

(D) Consider different levels of per capita water use according to plant water needs in different regions.

(E) Consider different levels of commercial, industrial, and institutional water use in different regions of the state.

(F) Avoid placing an undue hardship on communities that have implemented conservation measures or taken actions to keep per capita water use low.

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.

10608.56. (a) On and after July 1, 2016, an urban retail water supplier is not eligible for a water grant or loan awarded or administered by the state unless the supplier complies with this part.

(b) On and after July 1, 2013, an agricultural water supplier is not eligible for a water grant or loan awarded or administered by the state unless the supplier complies with this part.

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

(d) Notwithstanding subdivision (b), the department shall determine that an agricultural water supplier is eligible for a water 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 funds.

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

## **Land Use in the Secondary Zone**

**Issue: Limit the extent of the secondary zone subject to oversight by Delta governing bodies. Ensure greater local control over land use and infrastructure decisions in the secondary zone.**

***(Issue raised in Sept. 9 and Sept. 11 letters, and at the Oct. 5 GRAPA meeting.)***

### Steinberg Letter

3. b. *Greater local control over land use determinations in Delta secondary zone.* SACOG and others have expressed concern over the Delta Vision recommendation that actions taken by local governments within the secondary zone of the Delta be subject to review and consistency determination by the new Delta Stewardship Council.

With the help of Mike McKeever, SACOG's Executive Director, and Kirk Trost, the council's outstanding outside counsel, I'm pleased to report that we have negotiated language that SACOG assures us preserves the appropriate local control over land use decisions in the Delta secondary zone.

### Analysis

The bill includes language that was negotiated by SACOG and other stakeholders. First, it limits the potential preemptive effect of the bill over local land use decisions in the secondary zone. Second, it excludes the Regional Transportation Plan from the consistency requirements in the bill. The Delta Stewardship Council will have the opportunity for significant and timely input to the regional plan, but only through normal processes, i.e. no approval required, or separate process created. Third, it excludes from the consistency requirements in the bill actions by local jurisdictions in the secondary zone that are consistent with the sustainable communities strategy or alternative planning strategy, whichever is approved by the State Air Resources Board. Finally, the new language also excludes infrastructure projects not only in a Regional Transportation Plan, but also those necessary to implement local plans that are consistent with the approved SCS or APS. For example, levee improvements required for existing and new development would be exempt.

SACOG initially sought language exempting all actions within municipal boundaries. The proposal did not get traction. However, as land use language related to an SCS or APS offered by environmental groups appeared to be getting traction, SACOG responded and was able to negotiate the aforementioned changes. This new language actually would exclude more land area than SACOG's original amendment language once an SCS or APS is approved.

The current language would also require that local and regional plans be reviewed in a timely manner by the DSC to provide advice on the consistency of these plans with, among other aspects of the Delta Plan, the "ecosystem restoration needs of the Delta and reviewing whether the lands set aside for natural resource protection are sufficient to meet the Delta's ecosystem needs."

SBX7 4 or SBX7 1 (Policy Bills)

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 any 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.
- (3) Regional transportation plans prepared pursuant to Section 65080 of the Government Code.
- (4) Any plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization under Section 65080 of the Government Code has determined is consistent with either a sustainable communities strategy or an alternative planning strategy that the State Air Resources Board has determined would, if implemented, achieve the greenhouse gas emission reduction targets established by that board pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code. For purposes of this section, "consistent with" means consistent with the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, as applicable, and any infrastructure necessary to support the plan, program, project, or activity.
- (5) Routine maintenance and operation of any facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency.
- (6) Any plan, program, project, or activity that occurs, in whole or in part, in the Delta, if both of the following conditions are met:
  - (A) The plan, program, project, or activity is undertaken by a local public agency that is located, in whole or in part, in the Delta.
  - (B) Either a notice of determination is filed, pursuant to Section 21152 of the Public Resources Code, for the plan, program, project, or activity by, or the plan, program, project, or activity is fully permitted by, September 30, 2009.

85022. (a) It is the intent of the Legislature that state and local land use actions identified as "covered actions" pursuant to Section 85058.5 be consistent with the Delta Plan. This section's findings, policies, and goals apply to Delta land use planning and development.

85212. The council shall review and provide timely advice to local and regional planning agencies regarding the consistency of local and regional planning documents, including sustainable communities strategies and alternative planning strategies prepared pursuant to Section 65080 of the Government Code, with the Delta Plan. The council's input shall include, but not be limited to, reviewing the consistency of local and regional planning documents with the ecosystem restoration needs of the Delta and reviewing whether the lands set aside for natural resource protection are sufficient to

meet the Delta's ecosystem needs. A metropolitan planning organization preparing a regional transportation plan under Section 65080 of the Government Code that includes land within the primary or secondary zones of the Delta shall consult with the council early in the planning process regarding the issues and policy choices relating to the council's advice. No later than 60 days prior to the adoption of a final regional transportation plan, the metropolitan planning organization shall provide the council with a draft sustainable communities strategy and an alternative planning strategy, if any. Concurrently, the metropolitan planning organization shall provide notice of its submission to the council in the same manner in which agencies file a certificate of consistency pursuant to Section 85225. If the council concludes that the draft sustainable communities strategy or alternative planning strategy is inconsistent with the Delta Plan, the council shall provide written notice of the claimed inconsistency to the metropolitan planning organization no later than 30 days prior to the adoption of the final regional transportation plan. If the council provides timely notice of a claimed inconsistency, the metropolitan planning organization's adoption of the final regional transportation plan shall include a detailed response to the council's notice.

## Water Rights

**Issue: Protect water rights in the region, area of origin, and county of origin protection.**

***(Issue raised at the Oct. 5 GRAPA meeting.)***

### Steinberg Letter

*Statutory assurances that regional water rights and entitlements will be protected.*

Our local and regional water agencies have expressed strong concern that their existing and legally enforceable water rights, area of origin, and county of origin protections be unaffected in any manner by the new Delta legislation.

I have ensured that the legislation will contain a sweeping “savings clause” that states the following:

***“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.”***

### Analysis

The bill does contain the “savings clause” quoted in Sen. Steinberg’s letter. Some in the region have argued that the language needs minor clarification (changing “division” to “act”), while others argue that additional modifications are required to ensure that water rights are protected. Specifically, they argue that new streamflow requirements ultimately could impair the rights of upstream water users and that the requirements would be set in an expedited manner, without reasonable scientific support. They further assert that the 20 percent conservation target would preempt local water management plans, such as the Water Forum, and conflict with water rights priorities and area of origin laws. Supporters of the new language have asserted that the bill adequately protects existing water rights and that the modifications requested would not merely preserve existing water rights but would provide more protections than are afforded by existing law.

### SBX7 4 or SBX7 1 (Policy Bills)

85031. (a) 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, rights to water appropriated prior to December 19, 1914, provided under the law. This division does not limit or otherwise affect the application of Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections 12200 to 12220, inclusive.

(b) Nothing in this division supersedes, limits, or otherwise modifies the applicability of Chapter 10 (commencing with Section 1700) of Part 2 of Division 2, including petitions related to any new conveyance constructed or operated in accordance with Chapter 2 (commencing with Section 85320) of Part 4.

(c) Unless otherwise expressly provided, nothing in this division supersedes, reduces, or otherwise affects existing legal protections, both procedural and substantive, relating to the board’s regulation of diversion and use of water, including, but not limited to, the protection provided to municipal

interests by Sections 106 and 106.5, and changes in water rights. Nothing in this division expands or otherwise alters the board's existing authority to regulate the diversion and use of water or the courts' existing concurrent jurisdiction over California water rights.

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

(i) Any water right.

## **Funding for Water Management Planning and Implementation**

**Issue: Secure funding for the planning and implementation of agricultural and urban water management plans.**

***(Issue raised in the Sept. 9 letter.)***

### Analysis

While not addressed in Sen. Steinberg's letter, SACOG sought amendments to secure funding for agricultural and urban water management plans. As noted above, the new policy bill includes language stating that funding for these plans will be available even if the supplier is not in compliance with requirements of the bill (Section 10608.56). While both bond bills have sources of fund for region-wide or basin-wide programs and projects—which may include agriculture—Sen. Cogdill's bond bill specifies funding for agriculture water management plans.

### SBX7 2 (Cogdill Bond Bill)

79784. (a) (1) The sum of two hundred fifty million dollars(\$250,000,000) shall be available, upon appropriation by the Legislature from the fund, for direct expenditures, grants, and loans for water conservation and water use efficiency projects and programs, including any of the following:

(A) Urban water conservation projects and programs, including regional projects and programs, implemented pursuant to Part 2.55 (commencing with Section 10608). Priority for funding shall be given to programs that do the following:

(i) Assist water suppliers and regions to implement conservation programs and measures that are not locally cost-effective.

(ii) Support water supplier and regional efforts to implement programs targeted to enhance water use efficiency for commercial, industrial, and institutional water users.

(iii) Assist water suppliers and regions with programs and measures targeted toward realizing the conservation benefits of implementation of the provisions of the state landscape model ordinance.

(B) Agricultural water use efficiency projects and programs pursuant to Part 2.8 (commencing with Section 10800).

(C) Agricultural water management plans developed pursuant to Part 2.8 (commencing with Section 10800).