



Land Use & Housing Committee

October 22, 2009

State Water Legislation Update

Issue: The Legislature is continuing to work on legislation that could significantly change water and related issues statewide.

Recommendation: None; this item is for information only.

Discussion: Since the last Government Relations & Public Affairs Committee meeting, staff has continued to work with Senator Steinberg's office to address the SACOG staff-recommended amendments (attached). At the time of this writing, the version of SB 68 discussed on October 15 was the latest version in print.

On Monday, October 26, the Assembly Water, Parks and Wildlife, and Senate Natural Resources and Water committees will hold a joint hearing. It is unclear how soon any legislation will be acted on. Staff and SACOG's state legislative advocate, Jack Molodanof, will provide additional information at the committee meeting.

A coalition of governmental, labor, business, and community leaders in the Sacramento region wrote a letter to Senator Steinberg (attached) urging that SB 68 be amended to protect the region's ability to implement land use plans or maintain water supplies and rights.

Approved by:

Mike McKeever
Executive Director

MM:EJ:DS:sb

Attachments

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D R A F T
SACOG SB 68 Proposed Amendments
October 2, 2009

Land Use in the Secondary Zone

Limit the extent of the secondary zone subject to DPC oversight:

29773. (a) The commission may review and provide comments and recommendations to the Delta Stewardship Council on any significant project or proposed project within the scope of the Delta Plan, including, but not limited to, actions by state and federal agencies, that may affect the unique cultural, recreational, and agricultural values within the ~~primary and secondary zones~~ Delta as defined in Section 85058. Review and comment authority granted to the commission shall include, but is not limited to, all of the following:

- (1) Identification of impacts to the cultural, recreational, and agricultural values of the Delta.
- (2) Recommendations for actions that may avoid, reduce, or mitigate impacts to the cultural, recreational, and agricultural values of the Delta.
- (3) Review of consistency of the project or proposed project with the resources management plan and the Delta Plan.
- (4) Identification and recommendation of methods to address Delta community concerns regarding large-scale habitat plan development and implementation.

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

Exclude municipal boundaries from inclusion in the primary zone

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

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

Limit the geographic scope of the policies and powers of the Delta Stewardship Council:

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

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

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

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

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

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

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

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

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

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

(3) Maximize public access to Delta resources and maximize public recreational opportunities in the Delta consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

(4) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the Delta.

(5) Develop new or improved aquatic and terrestrial habitat and protect existing habitats to advance the goal of restoring and enhancing the Delta ecosystem

(e) This section shall apply to the Delta as defined in Section 85058.

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 as defined in Section 85058 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.

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

(a) lands in the secondary zone within municipal boundaries.

(b) lands in the secondary zone annexed into municipal boundaries that have been reviewed and approved pursuant to:

(1) Section 56375 establishing the authority of a Local Area Formation Commission to review and approve an annexation.

(2) Section 85225 requiring local agency preparation of a certificate of consistency with the Delta Plan.

(3) Section 85225.25 authorizing the Delta Stewardship Council's review of a covered action.

Governance

Restore current city representation process for the Delta Protection Commission:

~~29735. (b) (1) Three elected city council members shall be selected and appointed by city selection committees, from regional and area councils of government the appropriate regions specified below, one in each of the following areas:~~

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

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

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

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

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

(Keep original section 29735(b))

Remove prohibition on city representation on the Delta Stewardship Council:

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) and (b) 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) and (b) of Section 29735.

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

Water Conservation

Expand the options for local water use efficiency and conservation plans to set and meet water use targets:

10608.20. (a) (1) Each urban retail water supplier shall develop urban water use targets and an interim urban water use target by December 31, 2010. Urban retail water suppliers may elect to determine and report progress toward achieving these targets on an individual or regional basis, as provided in subdivision (a) of Section 10608.28, and may determine the targets on a fiscal year or calendar year basis.

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

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

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

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

(A) For indoor residential water use, 55 gallons per capita daily water use as a provisional standard. Upon completion of the department's 2016 report to the Legislature pursuant to Section 10608.42, this standard may be adjusted by the Legislature by statute.

(B) For landscape irrigated through dedicated or residential meters or connections, water efficiency equivalent to the standards of the Model Water Efficient Landscape Ordinance set forth in Chapter 2.7 (commencing with Section 490) of Division 2 of Title 23 of the California Code of Regulations, as in effect the later of the year of the landscape's installation or 1992. An urban retail water supplier using the approach specified in this subparagraph shall use satellite imagery, site visits, or other best available technology to develop an accurate estimate of landscaped areas.

(C) For commercial, industrial, and institutional uses, a 10-percent reduction in water use from the baseline commercial, industrial, and institutional water use by 2020.

(3) Ninety-five percent of the applicable state hydrologic region target, as set forth in the state's draft 20x2020 Water Conservation Plan (dated April 30, 2009). If the service area of an urban water supplier includes more than one hydrologic region, the supplier shall apportion its service area to each region based on population or area.

(4) Water system efficiency improvements that equal 20 percent of the urban retail water supplier's baseline per capita daily water use if all of the following apply:

(A) The urban retail water supplier adopts a plan to implement and finance all locally cost effective water demand reduction measures in its service area;

(B) The urban retail water supplier will pursue funding from the State of California, the United States or other sources to finance implementation of additional water demand reduction measures; and

(C) The urban retail water supplier adopts a plan to implement and finance regional water resources management measures sufficient to ensure that the sum of the water demand reduction measures described in subdivision (A) and those regional water resources management measures equals, on a per capita basis, 20 percent of the supplier's baseline per capita daily water use.

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

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

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

(f) (1) The department shall, through a public process and in consultation with the California Urban Water Conservation Council, develop technical methodologies for the consistent implementation of this part, including, but not limited to, methodologies for calculating base daily per capita water use, baseline commercial, industrial, and institutional water use, compliance daily per capita water use, gross water use, service area population, indoor residential water use, and landscaped area, and criteria for adjustments pursuant to subdivisions (d) and (e) of Section 10608.24. The department shall post these methodologies on its Internet Web site, and make written copies available, by October 1, 2010. An urban retail water supplier shall use the methods developed by the department in compliance with this part.

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

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

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

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

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

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

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

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

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

(2) If the urban retail water supplier elects to adjust its estimate of compliance daily per capita water use due to one or more of the factors described in paragraph

(1), it shall provide the basis for, and data supporting, the adjustment in the report required by Section 10608.40.

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

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

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

Agricultural and Urban Water Management Planning and Implementation Funding

Add bond funding outlined in AB 893 for Water Management Planning and implementation:

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

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

(c) It is the intent of the Legislature that funds made available by Section 79931 proposed in AB 893 characterized as a general obligation bond for Delta Sustainability be expended upon appropriation by the Legislature for grants to implement this part.

(d) It is the intent of the Legislature that funds made available by Section 79941 proposed in AB 893 characterized as a general obligation bond for Statewide Water System Operational Improvements be expended upon appropriation by the Legislature for grants to implement this part.

D R A F T
SACOG AB 893 Proposed Amendments
October 2, 2009

79931. (b) One billion dollars (\$1,000,000,000) for projects to protect and enhance the sustainability of the Delta ecosystem, including any of the following:

- (1) Projects for the development and implementation of the Bay Delta Conservation Plan consistent with Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code. The projects shall be implemented through a cooperative effort among regulatory agencies, regulated and potentially regulated entities, and affected parties, including state and federal water contractors. These funds may be expended for the preparation of environmental documentation and environmental compliance.
- (2) Other projects to protect and restore native fish and wildlife dependent on the Delta ecosystem, including the acquisition of water rights and the removal or reduction of undesirable invasive species.
- (3) Projects to reduce greenhouse gas emissions from exposed Delta soils.
- (4) Projects that reduce impacts of mercury contamination of the Delta and its watersheds, and remediation and elimination of continuing sources of mercury contamination.
- (5) Scientific studies and assessments that support the projects authorized under this section.
- (6) Development and implementation of urban and agricultural water management plans

79941. Projects for which the public benefits are eligible for funding under this chapter consist of any of the following:

- (a) Surface storage projects identified in the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, excluding the expansion of the Shasta Reservoir.
- (b) Groundwater storage projects and groundwater contamination prevention or remediation projects that provide water storage benefits.
- (c) Conjunctive use and reservoir reoperation projects.
- (d) Regional and local surface storage projects that improve the operation of water systems in the state and provide public benefits.
- (e) Development and implementation of urban and agricultural water management plans

Possible Additional Amendments

- Recognize “remediated groundwater” as being equivalent to “recycled water” in efforts to offset potable demand
 - Remediated groundwater is water that has been remediated to a standard fit for use under applicable laws
- Recognize that investments in groundwater recharge are similar to investments in recycled water in efforts to reduce surface water demand and conjunctive use.
- Recognize that bond funding for actions that may not be locally cost effective can still have statewide benefits.
- Exclude “product water” from “gross water use” to reflect that product water cannot be reduced without reducing economic output
 - Product water is used for industrial uses within an urban water supplier’s service area
- Reflect existing state law setting water metering deadlines, the effectiveness of meters, and funding to accelerate metering.
- Consider Integrated Regional Water Management Plans in water conservation strategies.
- Consider LAFCo review of annexations to include Delta Plan consistency findings.
- Possible linkages to SB375
 - Population growth projections should align with the SCS
 - Secondary zone impacts reduced for development consistent with an SCS/APS that meets CARB ghg target
 - Methodology for meeting water conservation targets must accurately and equitably consider projected per capita water use for new development vs. existing development, consistent with the growth pattern in the SCS.
- Map lands in the secondary zone that would be subject to future restriction or review by the Delta Stewardship Council.



October 19, 2009

The Honorable Darrell Steinberg
 Senate President *Pro Tempore*
 State Capitol, Room 205
 Sacramento, California 95814

Re: Water Legislation – Implementation of Protections for Sacramento Region

Dear Senator Steinberg:

In an October 2, 2009 letter to you, many governmental, labor, business and community leaders in the Sacramento region urged you to ensure that pending water legislation to address the Delta's problems would preserve the Sacramento region's ability to implement its land use plans, to maintain its water supplies, to protect water rights, and to have cost-effective wastewater service. Since then, you or members of your staff have met with many of the agencies that signed the October 2 letter. We very much appreciate your commitment to this cause. We all have understood that you intend to protect the region's land use, non-consumptive and consumptive water and wastewater interests. However, we have not yet seen any proposed language to protect the region's ability to implement land use plans or maintain water supplies and rights.

To date, the Legislature has not produced a new version of Senate Bill 68 that reflects changes to the September 11, 2009 version of that bill. Since representatives of this region are not included in the ongoing negotiations, we urge you to ensure that such a new version of SB 68 is made public far enough ahead of any legislative hearings – and especially any votes – that the Sacramento region can review that legislation and provide you with thoughtful comments. Given the comprehensive nature of this legislation, sufficient time of at least three days is needed to conduct a detailed review and provide substantive feedback.

We look forward to working with you as our representative to ensure that the region's interests are protected as the Legislature seeks to resolve the problems in the Delta that have affected water supplies to the western San Joaquin Valley and Southern California. As you know, many of our agencies have provided the Legislature with proposed amendments to SB 68. We would be happy to have further opportunities to work with you on the bill's detailed language and stand ready to take advantage of any such opportunities on very short notice.

Once again, we appreciate your commitment to protecting our region's interests as the state develops a comprehensive solution to the Delta's problems and look forward to seeing the results of that commitment.



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Shauna Lorance
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San Juan Water District

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