

AMENDED IN SENATE OCTOBER 29, 2009

CALIFORNIA LEGISLATURE—2009—10 SEVENTH EXTRAORDINARY SESSION

SENATE BILL

No. 4

Introduced by Senator Steinberg

October 28, 2009

An act to amend Sections 6103.1 and 6103.4 of the Government Code, to amend Sections 29702, 29725, 29727, 29733, 29735, 29735.1, 29738, 29741, 29751, 29752, 29754, 29756.5, 29763, 29771, and 29780 of, to add Sections 29703.5, 29722.5, 29722.7, 29728.5, 29759, 29773, 29773.5, and 29778.5 to, to add Division 22.3 (commencing with Section 32300) to, to repeal Section 29762 of, and to repeal and add Sections 29736, 29739, 29753, 29761, 29761.5, and 29764 of, the Public Resources Code, to amend Sections 1052, 1055, 1055.2, 1055.3, 1120, 1525, 1535, 1538, 1550, 1551, 1825, 1845, 2525, 2526, 2550, 2763.5, 5100, 5101, 5103, 5106, and 5107 of, to amend and repeal Section 10631.5 of, to add Sections 1051.1, 1240.5, 1826, 1846, and 1847 to, to add Chapter 2.7 (commencing with Section 348) to Division 1 of, to add Part 2.55 (commencing with Section 10608) and Part 2.11 (commencing with Section 10920) to Division 6 of, to add Division 35 (commencing with Section 85000) to, to repeal Section 5108 of, to repeal Division 26.4 (commencing with Section 79400) of, to repeal and add Section 12924 of, and to repeal and add Part 2.8 (commencing with Section 10800) of Division 6 of, the Water Code, and to amend and supplement the Budget Act of 2009 (Chapter 1 of the 2009–10 Third Extraordinary Session) by amending Items 3940-001-0439 and 3940-001-3058 of Section 2.00 of the Budget Act of 2009, relating to public resources, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 4, as amended, Steinberg. Public resources.

(1) Existing law requires various state agencies to administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta. The Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992 (Delta Protection Act) creates the Delta Protection Commission and requires the commission to prepare and adopt a comprehensive long-term resource management plan for specified lands within the Sacramento-San Joaquin Delta (Delta).

This bill would revise and recast the provisions of the Delta Protection Act to, among other things, reduce the number of commission members, as specified. The bill would require the commission to appoint at least one advisory committee consisting of representatives from specified entities to provide input regarding the diverse interests within the Delta. The bill would require the commission to adopt, not later than July 1, 2011, an economic sustainability plan containing specified elements and would require the commission to review and, as determined to be necessary, amend the plan every 5 years.

The bill would require the commission to prepare and submit to the Legislature, by July 1, 2010, recommendations on the potential expansion of or change to the primary zone or the Delta.

The bill would establish the Delta Investment Fund in the State Treasury. Moneys in the fund, upon appropriation by the Legislature, would be required to be expended by the commission to implement the regional economic sustainability plan.

The bill would establish in the Natural Resources Agency the Sacramento-San Joaquin Delta Conservancy. The conservancy would be required to act as a primary state agency to implement ecosystem restoration in the Delta and to support efforts that advance environmental protection and the economic well-being of Delta residents. The bill would specify the composition of the conservancy and grant certain authority to the conservancy, including the authority to acquire real property interests from willing sellers or transferors. The conservancy would be required to use conservation easements to accomplish ecosystem restoration whenever feasible. The conservancy would be required to prepare and adopt a strategic plan to achieve the goals of the conservancy. The strategic plan would be required to be consistent with certain plans. The bill would establish the Sacramento-San Joaquin

Delta Conservancy Fund in the State Treasury. Moneys in the fund would be available, upon appropriation, to finance projects, including ecosystem restoration and economic sustainability projects.

(2) Existing law requires the Secretary of the Natural Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill would enact the Sacramento-San Joaquin Delta Reform Act of 2009. The bill would establish the Delta Stewardship Council as an independent agency of the state. The council would be required to consist of 7 members appointed in a specified manner. The bill would specify the powers of the council. The bill would require the council, on or before January 1, 2012, to develop, adopt, and commence implementation of a comprehensive management plan for the Delta (Delta Plan), meeting specified requirements. The bill would require a state or local public agency that proposes to undertake certain proposed actions that will occur within the boundaries of the Delta or the Suisun Marsh to prepare, and submit to the council, a specified written certification of consistency with the Delta Plan prior to taking those actions. By imposing these requirements on a local public agency, the bill would impose a state-mandated local program. The bill would establish an appeal process by which a person may claim that a proposed action is inconsistent with the Delta Plan, as prescribed.

The bill would impose requirements on the Department of Water Resources in connection with the preparation of a specified Bay Delta Conservation Plan (BDCP). The BDCP would only be permitted to be incorporated in the Delta Plan if certain requirements are met.

The bill would establish the Delta Independent Science Board, whose members would be appointed by the council. The bill would require the Delta Independent Science Board to develop a scientific program relating to the management of the Delta.

The bill would require the State Water Resources Control Board to establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010. The bill would require the board to develop new flow criteria for the Delta ecosystem, as specified. The board would be required to submit those determinations to the council. The bill would require the board, in consultation with the council, to appoint a special master for the Delta, referred to as the Delta

Watermaster. The bill would grant specified authority to the Delta Watermaster.

(3) The California Bay-Delta Authority Act establishes the California Bay-Delta Authority in the Resources Agency. The act requires the authority and the implementing agencies to carry out programs, projects, and activities necessary to implement the Bay-Delta Program, defined to mean those projects, programs, commitments, and other actions that address the goals and objectives of the CALFED Bay-Delta Programmatic Record of Decision, dated August 28, 2000, or as it may be amended.

This bill would repeal that act. The bill would impose requirements on the council in connection with the repeal of that act.

(4) Existing law requires the Department of Water Resources to convene an independent technical panel to provide information to the department and the Legislature on new demand management measures, technologies, and approaches. “Demand management measures” means those water conservation measures, programs, and incentives that prevent the waste of water and promote the reasonable and efficient use and reuse of available supplies.

This bill would require the state to achieve a 20% reduction in urban per capita water use in California by December 31, 2020. The state would be required to make incremental progress towards this goal by reducing per capita water use by at least 10% on or before December 31, 2015. The bill would require each urban retail water supplier to develop urban water use targets and an interim urban water use target, in accordance with specified requirements. The bill would require agricultural water suppliers to implement efficient water management practices. The bill would require the department, in consultation with other state agencies, to develop a single standardized water use reporting form. The bill, with certain exceptions, would provide that urban retail water suppliers, on and after July 1, 2016, and agricultural water suppliers, on and after July 1, 2013, are not eligible for state water grants or loans unless they comply with the water conservation requirements established by the bill. The bill would repeal, on July 1, 2016, an existing requirement that conditions eligibility for certain water management grants or loans to an urban water supplier on the implementation of certain water demand management measures.

(5) Existing law, until January 1, 1993, and thereafter only as specified, requires certain agricultural water suppliers to prepare and adopt water management plans.

This bill would revise existing law relating to agricultural water management planning to require agricultural water suppliers to prepare and adopt agricultural water management plans with specified components on or before December 31, 2012, and update those plans on or before December 31, 2015, and on or before December 31 every 5 years thereafter. An agricultural water supplier that becomes an agricultural water supplier after December 31, 2012, would be required to prepare and adopt an agricultural water management plan within one year after becoming an agricultural water supplier. The agricultural water supplier would be required to notify each city or county within which the supplier provides water supplies with regard to the preparation or review of the plan. The bill would require the agricultural water supplier to submit copies of the plan to the department and other specified entities. The bill would provide that an agricultural water supplier is not eligible for state water grants or loans unless the supplier complies with the water management planning requirements established by the bill.

(6) Existing law generally prohibits the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, from being required to pay any fee for the performance of an official service. Existing law exempts from this provision any fee or charge for official services required pursuant to specified provisions of law relating to water use or water quality.

This bill would expand the exemption to other provisions relating to water use, including provisions that require the payment of fees to the State Water Resources Control Board for official services relating to statements of water diversion and use.

(7) Existing law authorizes the State Water Resources Control Board to investigate all streams, stream systems, lakes, or other bodies of water, take testimony relating to the rights to water or the use of water, and ascertain whether water filed upon or attempted to be appropriated is appropriated under the laws of the state. Existing law requires the board to take appropriate actions to prevent waste or the unreasonable use of water. Under existing law, the board makes determinations with regard to the availability of recycled water.

This bill would authorize the board, in conducting an investigation or proceeding for these purposes, to order any person or entity that diverts water or uses water to submit any technical or monitoring report related to the diversion or use of water by that person or entity. The bill

would authorize the board, in connection with the investigation or proceeding, to inspect the facilities of any person or entity to determine compliance with specified water use requirements.

(8) Existing law authorizes the State Water Resources Control Board, upon the submission of a petition signed by a claimant to water of any stream system requesting a determination of rights among the claimants to that water, to enter an order granting the petition. After granting the petition, the board is required to investigate the stream system to gather information necessary to make a determination of the water rights of that stream system.

This bill would authorize the board to initiate a determination of rights under its own motion if after a hearing it finds, based on substantial evidence, that the public interest and necessity will be served by a determination of rights.

(9) Existing law declares that the diversion or use of water other than as authorized by specified provisions of law is a trespass. Existing law authorizes the administrative imposition of civil liability by the board for a trespass in an amount not to exceed \$500 for each day in which the trespass occurs. Moneys generated by the imposition of civil liability under these provisions are deposited in the Water Rights Fund.

This bill would provide that a person or entity committing a trespass may be liable in an amount not to exceed the sum of \$1,000 or \$5,000 for each day in which the trespass occurs, as specified, or the highest market value of the water, whichever is the greater amount. The moneys would be required to be deposited in the Water Rights Fund, as specified. The bill would establish the Water Rights Protection Subaccount in the Water Rights Fund. Specified penalties would be required to be deposited in the subaccount. The bill would state legislative intent regarding the expenditure of the moneys in the subaccount.

(10) Existing law, with certain exceptions, requires each person who diverts water after December 31, 1965, to file with the State Water Resources Control Board a prescribed statement of diversion and use. Existing law requires a statement to include specified information, including, on and after January 1, 2012, monthly records of water diversions. Under existing law, the monthly record requirement does not apply to a surface water diversion with a combined diversion capacity from a natural channel that is less than 50 cubic feet per second or to diverters using siphons in the tidal zone. Existing law subjects a person who makes a material misstatement in connection with the filing

of the diversion and use statements to administratively imposed civil penalties in the amount of \$500 for each violation.

This bill would revise the types of water diversions for which the reporting requirement does not apply, including, among other diversions, a diversion that occurs before January 1, 2009, if certain requirements are met. The bill would delete exceptions to the monthly record requirement, and revise requirements relating to the contents of the statement of diversions and use.

The bill would subject a person to civil liability if that person fails to file, as required, a diversion and use statement for a diversion or use that occurs after January 1, 2009, tampers with any measuring device, or makes a material misstatement in connection with the filing of a diversion and use statement. The board would be authorized to impose the civil liability in accordance with a specified schedule. Funds recovered pursuant to these provisions would be required to be deposited in the Water Rights Fund, as specified.

The bill would authorize the board and the Department of Water Resources to adopt emergency regulations for the electronic filing of reports of water diversion or use that are required to be filed with those respective state agencies under specified statutory provisions.

The bill would establish a rebuttable presumption, in any proceeding before the board in which it is alleged that an appropriative right has ceased or is subject to prescribed action, that no use required to be included in a statement of diversion and use occurred unless that use is included in a statement that is submitted to the board within a specified time period.

The bill would require a person who files a statement of diversion and use, and certain petitions involving a change in a water right, to pay an annual fee, for deposit in the Water Rights Fund. The bill would include as recoverable costs, for which the board may be reimbursed from the fund upon appropriation therefor, costs incurred in connection with carrying out requirements relating to the statements of diversion and use and the performance of duties under the public trust doctrine and provisions that require the reasonable use of water.

(11) Existing law authorizes the State Water Resources Control Board to issue a cease and desist order against a person who is violating, or threatening to violate, certain requirements, including requirements set forth in a decision or order relating to the unauthorized use of water. Any person who violates a cease and desist order may be liable in an amount not to exceed \$1,000 for each day in which the violation occurs.

Revenue generated from these penalties is deposited in the Water Rights Fund.

This bill would increase, as specified, the civil penalties that apply to a person who violates a cease and desist order. The bill would impose civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for a failure to comply with various reporting or monitoring requirements, including requirements imposed pursuant to the public trust doctrine. The bill would authorize the board to impose additional civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for the violation of a permit, license, certificate, or registration, or an order or regulation involving the unreasonable use of water. Funds derived from the imposition of these civil penalties would be deposited in the Water Rights Fund, as specified.

The bill would require that, in a proceeding before the board in which it is alleged that an appropriative water right has ceased, or is subject to prescribed action, there would be a rebuttable presumption that no use occurred on or after January 1, 2009, unless that diversion or use was reported to the board within 6 months after it is required to be filed with the board.

(12) Existing law authorizes a local agency whose service area includes a groundwater basin that is not subject to groundwater management to adopt and implement a groundwater management plan pursuant to certain provisions of law. Existing law requires a groundwater management plan to include certain components to qualify as a plan for the purposes of those provisions, including a provision that establishes funding requirements for the construction of certain groundwater projects.

This bill would establish a groundwater monitoring program pursuant to which specified entities, in accordance with prescribed procedures, may propose to be designated by the Department of Water Resources as groundwater monitoring entities, as defined, for the purposes of monitoring and reporting with regard to groundwater elevations in all or part of a basin or subbasin, as defined. The bill would require the department to work cooperatively with each monitoring entity to determine the manner in which groundwater elevation information should be reported to the department. The bill would authorize the department to make recommendations for improving an existing monitoring program, and to require additional monitoring wells under certain circumstances. If the department makes a specified determination

with regard to a basin or subbasin, the department would be required to notify the counties within which that basin or subbasin is located. Upon such notification, the counties would be required to take certain action related to groundwater monitoring, thereby imposing a state-mandated local program. Under certain circumstances, specified entities with authority to assume groundwater monitoring functions with regard to a basin or subbasin would not be eligible for a water grant or loan awarded or administered by the state, unless certain actions occur.

(13) Existing law requires the department to conduct an investigation of the state's groundwater basins and to report its findings to the Governor and the Legislature not later than January 1, 1980.

This bill would repeal that provision. The department would be required to conduct an investigation of the state's groundwater basins and to report its findings to the Governor and the Legislature not later than January 1, 2012, and every 5 years thereafter.

(14) Existing law, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, an initiative bond act approved by the voters at the November 7, 2006, statewide general election, authorizes the issuance of bonds in the amount of \$5,388,000,000, of which \$1,000,000,000 is made available to the Department of Water Resources, upon appropriation therefor, to meet the long term water needs of the state. Eligible projects are required to implement integrated regional water management plans and include fisheries restoration and protection projects. A portion of these funds may be expended directly or granted by the department to address multiregional needs or issues of statewide significance.

This bill would appropriate \$28,000,000 of these funds to the department for the department to expend, as specified, on the Two-Gates Fish Protection Demonstration Program managed by the United States Bureau of Reclamation. The bill would make a statement of legislative intent to finance the activities of the Delta Stewardship Council and the Sacramento-San Joaquin Delta Conservancy from funds made available pursuant to the Disaster Preparedness and Flood Prevention Bond Act of 2006 and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Bond Act of 2006.

(15) The Budget Act of 2009 made appropriations for the support of the State Water Resources Control Board for the 2009–10 fiscal year, with certain payments from the Water Rights Fund.

This bill would amend and supplement the Budget Act of 2009 by making an additional appropriation from the fund to support water rights enforcement. The bill would, commencing with the 2010–11 fiscal year, continuously appropriate \$3,750,000 on an annual basis only from fee revenue in the fund to the board for the purpose of funding permanent water rights enforcement positions.

(16) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

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

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

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

13 6103.4. Section 6103 does not apply to any fee or charge for
14 official services required by Section 100860 of the Health and
15 Safety Code.

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

18 29702. The Legislature further finds and declares that the basic
19 goals of the state for the Delta are the following:

20 (a) Achieve the two coequal goals of providing a more reliable
21 water supply for California and protecting, restoring, and enhancing
22 the Delta ecosystem. The coequal goals shall be achieved in a

1 manner that protects and enhances the unique cultural, recreational,
2 natural resource, and agricultural values of the Delta as an evolving
3 place.

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

7 (c) Ensure orderly, balanced conservation and development of
8 Delta land resources.

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

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

13 29703.5. The Legislature further finds and declares both of the
14 following:

15 (a) The Delta Protection Commission created pursuant to Section
16 29735 provides an existing forum for Delta residents to engage in
17 decisions regarding actions to recognize and enhance the unique
18 cultural, recreational, and agricultural resources of the Delta. As
19 such, the commission is the appropriate agency to identify and
20 provide recommendations to the Delta Stewardship Council on
21 methods of preserving the Delta as an evolving place as the Delta
22 Stewardship Council develops and implements the Delta Plan.

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

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

30 29722.5. “Delta Plan” means the plan adopted by the Delta
31 Stewardship Council pursuant to Section 85300 of the Water Code.

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

34 29722.7. “Economic sustainability plan” means the plan
35 adopted by the commission pursuant to Section 29759.

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

38 29725. “Local government” means the Counties of Contra
39 Costa, Sacramento, San Joaquin, Solano, and Yolo, and the Cities
40 of Sacramento, Stockton, Tracy, Antioch, Pittsburg, Isleton,

1 Lathrop, Brentwood, West Sacramento, and Oakley, and any other
2 cities that may be incorporated in the future in the primary zone.

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

5 29727. "Port" means the Port of Sacramento and the Port of
6 Stockton, including all the land owned or leased by those ports,
7 or potential sites identified in the Delta county general plans as of
8 January 1, 2010, and otherwise authorized by law.

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

11 29728.5. "Resources management plan" means the plan adopted
12 by the commission pursuant to Section 29760.

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

15 29733. "Unincorporated towns" means the communities of
16 Walnut Grove, Clarksburg, Courtland, Hood, Locke, Knightsen,
17 Collinsville, and Ryde.

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

20 29735. There is hereby created the Delta Protection
21 Commission consisting of 15 members as follows:

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

26 (b) (1) Two elected city council members shall be selected and
27 appointed by city selection committees, from the appropriate
28 regions specified in subparagraphs (A) and (B), one in each of the
29 following areas:

30 (A) One from the south Delta, consisting of the County of San
31 Joaquin.

32 (B) One from the west Delta, from either the County of Contra
33 Costa or the County of Solano, on a rotating basis.

34 (2) One elected city council member shall be selected and
35 appointed by city selection committees, from regional and area
36 councils of government from the north Delta, consisting of the
37 Counties of Yolo and Sacramento.

38 (3) A city council member appointed pursuant to this subdivision
39 may select a designee for purposes of this subdivision.

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

3 (c) One member each from the board of directors of three
4 different reclamation districts that are located within the primary
5 zone who are residents of the Delta, and who are elected by the
6 trustees of reclamation districts pursuant to paragraphs (1), (2),
7 and (3). Each reclamation district may nominate one director to
8 be a member. The member from an area described in paragraph
9 (1), (2), or (3) shall be selected from among the nominees by a
10 majority vote of the reclamation districts in that area. A member
11 selected pursuant to this subdivision may select a designee for this
12 purpose. For the purposes of this section, each reclamation district
13 shall have one vote. Reclamation district members shall consist
14 of the following:

15 (1) One member from the area of the North Delta Water Agency
16 as described in Section 9.1 of the North Delta Water Agency Act
17 (Chapter 283 of the Statutes of 1973).

18 (2) One member from an area including the west Delta
19 consisting of the area of Contra Costa County within the Delta and
20 within the Central Delta Water Agency as described in Section
21 9.1 of the Central Delta Water Agency Act (Chapter 1133 of the
22 Statutes of 1973).

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

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

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

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

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

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

36 29735.1. (a) A member of the commission described in
37 subdivision (a) of Section 29735 may, subject to the confirmation
38 of his or her appointing power, appoint an alternate to represent
39 him or her at a commission meeting. An alternate may serve prior

1 to confirmation for a period not to exceed 90 days from the date
2 of appointment, unless and until confirmation is denied.

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

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

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

16 29736. The appointed members of the commission shall serve
17 at the pleasure of their appointing entities.

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

20 29738. The office of an appointed member of the commission
21 is vacated upon the loss of any qualification required for
22 appointment, and in that event the appointing authority shall
23 appoint a successor within 30 days of the occurrence of the
24 vacancy.

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

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

29 29739. (a) The commission, during the first meeting of the
30 commission after January 1, 2010, shall elect from among the
31 members identified in subdivision (a) of Section 29735 a
32 chairperson who shall serve for one year.

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

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

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

1 29741. The time and place of the first meeting of the
2 commission, on and after January 1, 2010, shall be prescribed by
3 the Governor, but in no event shall it be scheduled for a date later
4 than January 31, 2010. All meetings after the first meeting shall
5 be held in a city within the Delta.

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

8 29751. A majority of the voting members of the commission
9 shall constitute a quorum for the transaction of the business of the
10 commission. A majority vote of the voting membership shall be
11 required to take action with respect to any matter unless otherwise
12 specified in this division. The vote of each member shall be
13 individually recorded.

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

16 29752. The commission shall adopt its own rules, regulations,
17 and procedures necessary for its organization and operation, and
18 shall conduct its meetings in compliance with the Bagley-Keene
19 Open Meeting Act (Article 9 (commencing with Section 11120)
20 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government
21 Code).

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

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

26 29753. (a) The commission shall appoint at least one advisory
27 committee to provide recommendations regarding the diverse
28 interests within the Delta. At a minimum, the advisory committees
29 shall include representatives of state agencies and other
30 stakeholders with interests in the Delta's ecosystem, water supply,
31 and socioeconomic sustainability, including, but not limited to, its
32 recreational, agricultural, flood control, environmental, and water
33 resources, and state, local, and utility infrastructure. The
34 commission shall encourage participation of various federal
35 agencies, including the United States Bureau of Reclamation, the
36 United States Fish and Wildlife Service, the United States Army
37 Corps of Engineers, and others as appropriate.

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

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

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

6 29754. The commission shall establish and maintain an office
7 within the Delta or the City of Rio Vista, and for this purpose the
8 commission may rent or own property and equipment. Any rule,
9 regulation, procedure, plan, or other record of the commission
10 which is of such a nature as to constitute a public record under
11 state law shall be available for inspection and copying pursuant to
12 the California Public Records Act (Chapter 3.5 (commencing with
13 Section 6250) of Division 7 of Title 1 of the Government Code).

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

16 29756.5. The commission may act as the facilitating agency
17 for the implementation of any joint habitat restoration or
18 enhancement programs located within the primary zone of the
19 Delta, including, but not limited to, a national heritage area
20 designation in the Delta.

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

23 29759. (a) Not later than July 1, 2011, the commission shall
24 prepare and adopt, by a majority vote of the membership of the
25 commission, an economic sustainability plan. The economic
26 sustainability plan shall include information and recommendations
27 that inform the Delta Stewardship Council’s policies regarding the
28 socioeconomic sustainability of the Delta region.

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

31 (1) Public safety recommendations, such as flood protection
32 recommendations.

33 (2) The economic goals, policies, and objectives in local general
34 plans and other local economic efforts, including recommendations
35 on continued socioeconomic sustainability of agriculture and its
36 infrastructure and legacy communities in the Delta.

37 (3) Comments and recommendations to the Department of Water
38 Resources concerning its periodic update of the flood management
39 plan for the Delta.

1 (4) Identification of ways to encourage recreational investment
2 along the key river corridors, as appropriate.

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

5 SEC. 27. Section 29761 is added to the Public Resources Code,
6 to read:

7 29761. The commission shall adopt, by a majority vote, the
8 economic sustainability plan and each plan update after at least
9 three public hearings, with at least one hearing held in a community
10 in the north Delta, one hearing in the south Delta, and one hearing
11 in the west Delta.

12 SEC. 28. Section 29761.5 of the Public Resources Code is
13 repealed.

14 SEC. 29. Section 29761.5 is added to the Public Resources
15 Code, to read:

16 29761.5. (a) The commission shall review, and, as determined
17 to be necessary, amend the economic sustainability plan every five
18 years on or before December 31 in years ending in six or one.

19 (b) The commission shall transmit copies of the economic
20 sustainability plan and any subsequent amendments to the
21 Governor, Legislature, each local government as defined in Section
22 29725, and Delta Stewardship Council within 60 days of adoption
23 or amendment. Within 180 days of the commission's adoption or
24 amendment of the economic sustainability plan, the Delta
25 Stewardship Council shall review the economic sustainability plan
26 for consistency with the Delta Plan.

27 SEC. 30. Section 29762 of the Public Resources Code is
28 repealed.

29 SEC. 31. Section 29763 of the Public Resources Code is
30 amended to read:

31 29763. Within 180 days from the date of the adoption of the
32 resources management plan or any amendments, changes, or
33 updates, to the resources management plan by the commission,
34 each local government shall submit to the commission proposed
35 amendments to its general plan that are intended to make the
36 general plan consistent with the resources management plan with
37 respect to land located within the primary zone.

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

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

3 29764. Land use authority granted to the commission by this
4 division is limited to the primary zone, and shall not preempt local
5 government general plans for lands within the secondary zone.

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

8 29771. After a hearing on an appealed action pursuant to
9 Section 29770, the commission shall either deny the appeal or
10 remand the matter to the local government or local agency for
11 reconsideration, after making specific findings. Upon remand, the
12 local government or local agency shall modify the appealed action
13 and resubmit the matter for review to the commission. A proposed
14 action appealed pursuant to this section shall not be effective until
15 the commission has adopted written findings, based on substantial
16 evidence in the record, that the action is consistent with the
17 resources management plan, the approved portions of local
18 government general plans that implement the resources
19 management plan, and this division.

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

22 29773. (a) The commission may review and provide comments
23 and recommendations to the Delta Stewardship Council on any
24 significant project or proposed project within the scope of the Delta
25 Plan, including, but not limited to, actions by state and federal
26 agencies, that may affect the unique cultural, recreational, and
27 agricultural values within the primary and secondary zones. Review
28 and comment authority granted to the commission shall include,
29 but is not limited to, all of the following:

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

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

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

10 29773.5. On or before July 1, 2010, the commission shall
11 prepare and submit to the Legislature recommendations regarding
12 the potential expansion of or change to the primary zone or the
13 Delta. The commission shall consider recommendations on the
14 status of all of the following areas:

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

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

23 29778.5. The Delta Investment Fund is hereby created in the
24 State Treasury. Any funds within the Delta Investment Fund shall
25 be available, upon appropriation by the Legislature, to the
26 commission for the implementation of the regional economic
27 sustainability plan, developed pursuant to Section 29759, for the
28 purposes of enhancing Delta communities. The Delta Investment
29 Fund may receive funds from federal, state, local, and private
30 sources.

31 SEC. 38. Section 29780 of the Public Resources Code is
32 amended to read:

33 29780. On January 1 of each year, the commission shall submit
34 to the Governor and the Legislature a report describing the progress
35 that has been made in achieving the objectives of this division.
36 The report shall include, but need not be limited to, ~~both~~ all of the
37 following:

- 38 (a) An evaluation of the effectiveness of the commission in
39 undertaking its functions prescribed in this division, including, but
40 not limited to, its mandates as follows:

1 (1) Determining the consistency of local general plans with the
2 Delta Plan.

3 (2) Outcomes of appealed local land use decisions pursuant to
4 Sections 29770 and 29771.

5 (3) Outcomes of reviews initiated by the commission.

6 (4) Facilitating regional economic sustainability.

7 (5) Supporting other regional activities for the enhancement of
8 Delta communities.

9 (b) An update of the economic sustainability plan, using baseline
10 conditions set forth in the original economic sustainability plan.

11 (c) *The status of the environmental thresholds established by*
12 *the commission in the original resource management plan.*

13 SEC. 39. Division 22.3 (commencing with Section 32300) is
14 added to the Public Resources Code, to read:

15

16 DIVISION 22.3. SACRAMENTO-SAN JOAQUIN DELTA
17 CONSERVANCY

18

19 CHAPTER 1. GENERAL PROVISIONS

20

21 32300. This division shall be known, and may be cited, as the
22 Sacramento-San Joaquin Delta Conservancy Act.

23 32301. The Legislature finds and declares all of the following:

24 (a) The Sacramento-San Joaquin Delta is a unique natural
25 resource of local, state, and national significance.

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

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

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

37 (e) The Delta and Suisun Marsh provide numerous opportunities
38 for recreation, such as boating, kayaking, fishing, hiking, birding,
39 and hunting. Navigable waterways in the Delta are available for
40 public access and currently make up the majority of recreational

1 opportunities. There is a need for land-based recreational access
2 points including parks, picnic areas, and campgrounds.

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

9 (g) The Delta is home to more than 500,000 people and 200,000
10 jobs, and contributes over thirty-five billion dollars
11 (\$35,000,000,000) to the state’s economy.

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

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

- 21 (1) Protect and enhance habitat and habitat restoration.
- 22 (2) Protect and preserve Delta agriculture and working
23 landscapes.
- 24 (3) Provide increased opportunities for tourism and recreation.
- 25 (4) Promote Delta legacy communities and economic vitality
26 in the Delta in coordination with the Delta Protection Commission.
- 27 (5) Increase the resilience of the Delta to the effects of natural
28 disasters such as floods and earthquakes, in coordination with the
29 Delta Protection Commission.
- 30 (6) Protect and improve water quality.
- 31 (7) Assist the Delta regional economy through the operation of
32 the conservancy’s program.
- 33 (8) Identify priority projects and initiatives for which funding
34 is needed.
- 35 (9) Protect, conserve, and restore the region’s physical,
36 agricultural, cultural, historical, and living resources.
- 37 (10) Assist local entities in the implementation of their habitat
38 conservation plans (HCPs) and natural community conservation
39 plans (NCCPs).

1 (11) Facilitate take protection and safe harbor agreements under
 2 the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531
 3 et seq.) and the California Endangered Species Act (Chapter 1.5
 4 (commencing with Section 2050) of Division 3 of the Fish and
 5 Game Code) for adjacent landowners and local public agencies.

6 (12) Promote environmental education.

7
 8 CHAPTER 2. DEFINITIONS
 9

10 32310. For the purposes of this division, the following terms
 11 have the following meanings:

12 (a) “Board” means the governing board of the Sacramento-San
 13 Joaquin Delta Conservancy.

14 (b) “Conservancy” means the Sacramento-San Joaquin Delta
 15 Conservancy.

16 (c) “Delta” means the Sacramento-San Joaquin Delta as defined
 17 in Section 12220 of the Water Code.

18 (d) “Fund” means the Sacramento-San Joaquin Delta
 19 Conservancy Fund created pursuant to Section 32360.

20 (e) “Local public agency” means a city, county, special district,
 21 or joint powers authority.

22 (f) “Nonprofit organization” means a private, nonprofit
 23 organization that qualifies for exempt status under Section
 24 501(c)(3) of Title 26 of the United States Code and that has among
 25 its principal charitable purposes preservation of land for scientific,
 26 recreational, scenic, or open-space opportunities, protection of the
 27 natural environment, preservation or enhancement of wildlife,
 28 preservation of cultural and historical resources, or efforts to
 29 provide for the enjoyment of public lands.

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

32
 33 CHAPTER 3. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY
 34

35 32320. There is in the Natural Resources Agency the
 36 Sacramento-San Joaquin Delta Conservancy, which is created as
 37 a state agency to work in collaboration and cooperation with local
 38 governments and interested parties.

39 32322. (a) The conservancy shall act as a primary state agency
 40 to implement ecosystem restoration in the Delta.

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

4 (1) Protect and enhance habitat and habitat restoration.

5 (2) Protect and preserve Delta agriculture and working
6 landscapes.

7 (3) Provide increased opportunities for tourism and recreation
8 in the Delta.

9 (4) Promote Delta legacy communities and economic vitality
10 in the Delta, in coordination with the Delta Protection Commission.

11 (5) Increase the resilience of the Delta to the effects of natural
12 disasters such as floods and earthquakes, in coordination with the
13 Delta Protection Commission.

14 (6) Protect and improve water quality.

15 (7) Assist the Delta regional economy through the operation of
16 the conservancy’s program.

17 (8) Identify priority projects and initiatives for which funding
18 is needed.

19 (9) Protect, conserve, and restore the region’s physical,
20 agricultural, cultural, historical, and living resources.

21 (10) Assist local entities in the implementation of their habitat
22 conservation plans (HCPs) and natural community conservation
23 plans (NCCPs).

24 (11) Facilitate take protection and safe harbor agreements under
25 the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531
26 et seq.), the California Endangered Species Act (Chapter 1.5
27 (commencing with Section 2050) of Division 3 of the Fish and
28 Game Code), and the Natural Community Conservation Planning
29 Act (Chapter 10 (commencing with Section 2800) of Division 3
30 of the Fish and Game Code) for adjacent landowners and local
31 public agencies.

32 (12) Promote environmental education through grant funding.

33 (c) When implementing subdivision (b), the conservancy shall
34 undertake efforts to enhance public use and enjoyment of lands
35 owned by the public.

36

37 CHAPTER 4. GOVERNING BOARD

38

39 32330. The board shall consist of 11 voting members and two
40 nonvoting members, appointed or designated as follows:

- 1 (a) The 11 voting members of the board shall consist of all of
- 2 the following:
- 3 (1) The Secretary of the Natural Resources Agency, or his or
- 4 her designee.
- 5 (2) The Director of Finance, or his or her designee.
- 6 (3) One member of the board or a designee who is appointed
- 7 by the Contra Costa County Board of Supervisors, who is a resident
- 8 of that county.
- 9 (4) One member of the board or a designee who is appointed
- 10 by the Sacramento County Board of Supervisors, who is a resident
- 11 of that county.
- 12 (5) One member of the board or a designee who is appointed
- 13 by the San Joaquin County Board of Supervisors, who is a resident
- 14 of that county.
- 15 (6) One member of the board or a designee who is appointed
- 16 by the Solano County Board of Supervisors, who is a resident of
- 17 that county.
- 18 (7) One member of the board or a designee who is appointed
- 19 by the Yolo County Board of Supervisors, who is a resident of that
- 20 county.
- 21 (8) Two public members appointed by the Governor, subject to
- 22 confirmation by the Senate.
- 23 (9) One public member appointed by the Senate Committee on
- 24 Rules.
- 25 (10) One public member appointed by the Speaker of the
- 26 Assembly.
- 27 (b) The two nonvoting members shall consist of a Member of
- 28 the Senate, appointed by the Senate Committee on Rules, and a
- 29 Member of the Assembly, appointed by the Speaker of the
- 30 Assembly. The members appointed under this subdivision shall
- 31 meet with the conservancy and participate in its activities to the
- 32 extent that this participation is not incompatible with their positions
- 33 as Members of the Legislature. The appointed members shall
- 34 represent a district that encompasses a portion of the Delta.
- 35 (c) Ten liaison advisers who shall serve in an advisory,
- 36 nonvoting capacity shall consist of all of the following:
- 37 (1) One representative of the United States Fish and Wildlife
- 38 Service, designated by the United States Secretary of the Interior.

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

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

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

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

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

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

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

17 (9) A designee of the Yolo Basin Foundation.

18 (10) A designee of the Delta Protection Commission.

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

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

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

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

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

30 32332. Annually, the voting members of the board shall elect
31 from among the voting members a chairperson and vice
32 chairperson, and other officers as necessary. If the office of the
33 chairperson or vice chairperson becomes vacant, a new chairperson
34 or vice chairperson shall be elected by the voting members of the
35 board to serve for the remainder of the term. The chairperson shall
36 be selected from among the members specified in paragraphs (3)
37 to (7), inclusive, of subdivision (a) of Section 32330.

38 32334. A majority of the voting members shall constitute a
39 quorum for the transaction of the business of the conservancy. The
40 board shall not transact the business of the conservancy if a quorum

1 is not present at the time a vote is taken. A decision of the board
2 requires an affirmative vote of six of the voting membership, and
3 the vote is binding with respect to all matters acted on by the
4 conservancy.

5 32336. The board shall adopt rules and procedures for the
6 conduct of business by the conservancy.

7 32338. The board may establish advisory boards or committees,
8 hold community meetings, and engage in public outreach.

9 32340. The board shall establish and maintain a headquarters
10 office within the Delta. The conservancy may rent or own real and
11 personal property and equipment pursuant to applicable statutes
12 and regulations.

13 32342. The board shall determine the qualifications of, and
14 shall appoint, an executive officer of the conservancy, who shall
15 be exempt from civil service. The board shall employ other staff
16 as necessary to execute the powers and functions provided for in
17 this division.

18 32344. The board may enter into contracts with private entities
19 and public agencies to procure consulting and other services
20 necessary to achieve the purposes of this division.

21 32346. The conservancy's expenses for support and
22 administration may be paid from the conservancy's operating
23 budget and any other funding sources available to the conservancy.

24 32348. The board shall conduct business in accordance with
25 the Bagley-Keene Open Meeting Act (Article 9 (commencing with
26 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of
27 the Government Code).

28 32350. The board shall hold its regular meetings within the
29 Delta or the City of Rio Vista.

30

31 CHAPTER 5. POWERS, DUTIES, AND LIMITATIONS

32

33 32360. (a) Except as specified in Section 32360.5, the
34 jurisdiction and activities of the conservancy are limited to the
35 Delta and Suisun Marsh.

36 (b) (1) The Sacramento-San Joaquin Delta Conservancy Fund
37 is hereby created in the State Treasury. Moneys in the fund shall
38 be available, upon appropriation by the Legislature, only for the
39 purposes of this division.

1 (2) Funds provided for ecosystem restoration and enhancement
2 shall be available for ecosystem restoration projects consistent
3 with the conservancy’s strategic plan adopted pursuant to Section
4 32376.

5 (3) Funds may be allocated to a separate program within the
6 conservancy for economic sustainability in the Delta. The economic
7 sustainability plan adopted pursuant to Section 29759 shall be the
8 basis for the program. Funds provided to the conservancy to
9 implement ecosystem restoration projects pursuant to the Bay
10 Delta Conservation Plan shall only be used for ecosystem
11 restoration purposes.

12 32360.5. In furtherance of the conservancy’s role in
13 implementing the Delta Plan, the conservancy may take or fund
14 an action outside the Delta and Suisun Marsh if the board makes
15 all of the following findings:

16 (a) The project implements the ecosystem goals of the Delta
17 Plan.

18 (b) The project is consistent with the requirements of any
19 applicable state and federal permits.

20 (c) The conservancy has given notice to and reviewed any
21 comments received from affected local jurisdictions and the Delta
22 Protection Commission.

23 (d) The conservancy has given notice to and reviewed any
24 comments received from any state conservancy where the project
25 is located.

26 (e) The project will provide significant benefits to the Delta.

27 32362. The conservancy may engage in partnerships with
28 nonprofit organizations, local public agencies, and landowners.

29 32363. In implementing this division, the conservancy shall
30 cooperate and consult with the city or county in which a grant is
31 proposed to be expended or an interest in real property is proposed
32 to be acquired, and shall, as necessary or appropriate, coordinate
33 its efforts with other state agencies, in cooperation with the
34 Secretary of the Natural Resources Agency. The conservancy shall,
35 as necessary or appropriate, cooperate and consult with a public
36 water system, levee, flood control, or drainage agency that owns
37 or operates facilities, including lands appurtenant thereto, where
38 a grant is proposed to be expended or an interest in land is proposed
39 to be acquired.

1 32364. (a) The conservancy may require a grantee to enter
2 into an agreement with the conservancy on terms and conditions
3 specified by the conservancy.

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

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

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

15 (e) The conservancy may require any funds that exceed the costs
16 of eligible or approved projects or of acquisition to be returned to
17 the conservancy, to be available for expenditure when appropriated
18 by the Legislature.

19 32364.5. (a) The conservancy may provide grants and loans
20 to state agencies, local public agencies, and nonprofit organizations
21 to further the goals of the conservancy.

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

25 (1) The intended use of the property.

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

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

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

34 32365. The conservancy may sue and be sued.

35 32366. (a) The conservancy may acquire from willing sellers
36 or transferors interests in real property and improve, lease, or
37 transfer interests in real property, in order to carry out the purposes
38 of this division.

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

1 32368. The conservancy may enter into an agreement with a
2 public agency, nonprofit organization, or private entity for the
3 construction, management, or maintenance of facilities authorized
4 by the conservancy.

5 32370. The conservancy shall not exercise the power of eminent
6 domain.

7 32372. (a) The conservancy may pursue and accept funds from
8 various sources, including, but not limited to, federal, state, and
9 local funds or grants, gifts, donations, bequests, devises,
10 subventions, grants, rents, royalties, or other assistance and funds
11 from public and private sources.

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

13 (c) The conservancy may create and manage endowments.

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

16 32376. Within two years of hiring an executive officer, the
17 board shall prepare and adopt a strategic plan to achieve the goals
18 of the conservancy. The plan shall describe its interaction with
19 local, regional, state, and federal land use, recreation, water and
20 flood management, and habitat conservation and protection efforts
21 within and adjacent to the Delta. The strategic plan shall establish
22 priorities and criteria for projects and programs, based upon an
23 assessment of program requirements, institutional capabilities, and
24 funding needs throughout the Delta. The strategic plan shall be
25 consistent with the Delta Plan, the Delta Protection Commission's
26 resources management plan, the Central Valley Flood Protection
27 Plan, the Suisun Marsh Preservation Act of 1977 (Division 19
28 (commencing with Section 29000)), and the Habitat Management,
29 Preservation and Restoration Plan for the Suisun Marsh.

30 32378. (a) The conservancy may expend funds and award
31 grants and loans to facilitate collaborative planning efforts and to
32 develop projects and programs that are designed to further the
33 purposes of this division.

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

38 32380. The conservancy may acquire water or water rights to
39 support the goals of the conservancy.

1 32381. This division does not grant to the conservancy any of
2 the following:

- 3 (a) The power of a city or county to regulate land use.
- 4 (b) The power to regulate any activities on land, except as the
5 owner of an interest in the land, or pursuant to an agreement with,
6 or a license or grant of management authority from, the owner of
7 an interest in the land.
- 8 (c) The power over water rights held by others.

9 SEC. 40. Chapter 2.7 (commencing with Section 348) is added
10 to Division 1 of the Water Code, to read:

11
12 CHAPTER 2.7. WATER DIVERSION AND USE REPORTS
13

14 348. (a) The department or the board may adopt emergency
15 regulations providing for the electronic filing of reports of water
16 diversion or use required to be filed with the department or board
17 under this code, including, but not limited to, any report required
18 to be filed under Part 5.1 (commencing with Section 5100) of
19 Division 2 and any report required to be filed by a water right
20 permittee or licensee.

21 (b) Emergency regulations adopted pursuant to this section, or
22 any amendments thereto, shall be adopted by the department or
23 the board in accordance with Chapter 3.5 (commencing with
24 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
25 Code. The adoption of these regulations is an emergency and shall
26 be considered by the Office of Administrative Law as necessary
27 for the immediate preservation of the public peace, health, safety,
28 and general welfare. Notwithstanding Chapter 3.5 (commencing
29 with Section 11340) of Part 1 of Division 3 of Title 2 of the
30 Government Code, any emergency regulations or amendments to
31 those regulations adopted under this section shall remain in effect
32 until revised by the department or the board that adopted the
33 regulations or amendments.

34 SEC. 41. Section 1051.1 is added to the Water Code, to read:

35 1051.1. (a) In conducting any investigation or proceeding
36 specified in Section 275 or 1051, or Article 7 (commencing with
37 Section 13550) of Chapter 7 of Division 7, the board may order
38 any person or entity that diverts or uses water to prepare and submit
39 to the board any technical or monitoring program reports related
40 to that person's or entity's diversion or use of water as the board

1 may specify. The costs incurred by the person or entity in the
2 preparation of those reports shall bear a reasonable relationship to
3 the need for the report and the benefit to be obtained from the
4 report. If the preparation of individual reports would result in a
5 duplication of effort, or if the reports are necessary to evaluate the
6 cumulative effect of several diversions or uses of water, the board
7 may order any person or entity subject to this subdivision to pay
8 a reasonable share of the cost of preparing reports.

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

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

23 (d) In conducting any investigation or proceeding specified in
24 Section 275 or 1051, or Article 7 (commencing with Section
25 13550) of Chapter 7 of Division 7, the board may inspect the
26 facilities of any person or entity to ascertain whether the purposes
27 of Section 100 and this division are being met and to ascertain
28 compliance with any permit, license, certification, registration,
29 decision, order, or regulation issued under Section 275, this
30 division, or Article 7 (commencing with Section 13550) of Chapter
31 7 of Division 7. The board shall adopt regulations for procedures
32 pursuant to Article 13 (commencing with Section 11460.10) of
33 Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government
34 Code, and any time extensions necessary to implement those
35 regulations. Except in the event of an emergency affecting the
36 public health or safety, the inspection shall be made with the
37 consent of the owner or possessor of the facilities or, if the consent
38 is withheld, with a warrant duly issued pursuant to the procedure
39 set forth in Title 13 (commencing with Section 1822.50) of Part
40 3 of the Code of Civil Procedure.

1 SEC. 42. Section 1052 of the Water Code is amended to read:

2 1052. (a) The diversion or use of water subject to this division
3 other than as authorized in this division is a trespass.

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

10 (c) (1) Any person or entity committing a trespass as defined
11 in this section may be liable in an amount not to exceed the greater
12 of either of the following amounts:

13 (A) One thousand dollars (\$1,000) for each day in which the
14 trespass occurs for the first enforcement proceeding or five
15 thousand dollars (\$5,000) for each day in which the trespass occurs
16 for any subsequent enforcement proceeding.

17 (B) The highest market value of the water subject to the trespass.

18 (2) The Attorney General, upon request of the board, shall
19 petition the superior court to impose, assess, and recover any sums
20 pursuant to this subdivision. In determining the appropriate amount,
21 the court shall take into consideration all relevant circumstances,
22 including, but not limited to, the extent of harm caused by the
23 violation, the nature and persistence of the violation, the length of
24 time over which the violation occurs, and, with respect to the
25 violator, the ability to pay, the effect on the ability to continue in
26 business, the corrective action, if any, taken by the violator, and
27 other matters as justice may require.

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

30 (d) (1) All funds recovered pursuant to this section shall be
31 deposited in the Water Rights Fund established pursuant to Section
32 1550.

33 (2) Any funds recovered pursuant to this section that exceed
34 the amounts that were authorized before the effective date of the
35 amendments made to this section by ____ of the 2009–10 Seventh
36 Extraordinary Session of the Legislature shall be deposited in the
37 Water Rights Protection Subaccount in the Water Rights Fund
38 established pursuant to Section 1550.

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

1 SEC. 43. Section 1055 of the Water Code is amended to read:

2 1055. (a) The executive director of the board may issue a
3 complaint to any person or entity on which administrative civil
4 liability may be imposed pursuant to Section 1052, Article 4
5 (commencing with Section 1845) of Chapter 12 of Part 2 of
6 Division 2, or Section 5107. The complaint shall allege the act or
7 failure to act that constitutes a trespass or violation, the provision
8 of law authorizing civil liability to be imposed, and the proposed
9 civil liability.

10 (b) The complaint shall be served by personal notice or certified
11 mail, and shall inform the party served that the party may request
12 a hearing not later than 20 days from the date the party was served.
13 The hearing shall be before the board, or a member of the board
14 in accordance with Section 183.

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

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

21 SEC. 44. Section 1055.2 of the Water Code is amended to read:

22 1055.2. No person or entity shall be subject to both civil
23 liability imposed under Section 1055 and civil liability imposed
24 by the superior court under Section 1052, 1845, or 1846 for the
25 same act or failure to act.

26 SEC. 45. Section 1055.3 of the Water Code is amended to read:

27 1055.3. In determining the amount of civil liability, the board
28 shall take into consideration all relevant circumstances, including,
29 but not limited to, the extent of harm caused by the violation, the
30 nature and persistence of the violation, the length of time over
31 which the violation occurs, and with respect to the violator, the
32 ability to pay, the effect on the ability to continue in business, the
33 corrective action, if any, taken by the violator, and other matters
34 as justice may require.

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

36 1120. This chapter applies to any decision or order issued under
37 this part or Section 275, Part 2 (commencing with Section 1200),
38 Part 2 (commencing with Section 10500) of Division 6, Article 7
39 (commencing with Section 13550) of Chapter 7 of Division 7,
40 Section 85230, or the public trust doctrine.

1 SEC. 47. Section 1240.5 is added to the Water Code, to read:
 2 1240.5. In any proceeding before the board in which it is
 3 alleged that a right to appropriate water has ceased or is subject to
 4 forfeiture or revocation for nonuse, there shall be a rebuttable
 5 presumption that no use occurred unless that use is included in a
 6 statement submitted pursuant to any reporting or monitoring
 7 requirement established under any permit, license, certificate,
 8 registration, decision or order, or regulation issued by the board
 9 pursuant to this division, Section 275, Article 7 (commencing with
 10 Section 13550) of Division 7, or the public trust doctrine under
 11 this part, and the statement is submitted within six months after it
 12 is required to be filed with the board. This section does not apply
 13 to any diversion or use that occurred before January 1, 2009.

14 SEC. 48. Section 1525 of the Water Code is amended to read:
 15 1525. (a) Each person or entity who holds a permit or license
 16 to appropriate water, and each lessor of water leased under Chapter
 17 1.5 (commencing with Section 1020) of Part 1, shall pay an annual
 18 fee according to a fee schedule established by the board.

19 (b) Each person or entity who files any of the following shall
 20 pay a fee according to a fee schedule established by the board:

- 21 (1) An application for a permit to appropriate water.
- 22 (2) A registration of appropriation for a small domestic use or
 23 livestock stockpond use.
- 24 (3) A petition for an extension of time within which to begin
 25 construction, to complete construction, or to apply the water to
 26 full beneficial use under a permit.
- 27 (4) A petition to change the point of diversion, place of use, or
 28 purpose of use, under a registration for small domestic use or
 29 livestock stockpond use, or under a permit or license.
- 30 (5) A petition to change the conditions of a permit or license,
 31 requested by the permittee or licensee, that is not otherwise subject
 32 to paragraph (3) or (4).
- 33 (6) A petition under Section 1707 or 1740 to change the point
 34 of diversion, place of use, or purpose of use of a water right that
 35 is not subject to a permit or license to appropriate water.
- 36 (7) A petition to change the point of discharge, place of use, or
 37 purpose of use, of treated wastewater, requested pursuant to Section
 38 1211.
- 39 (8) An application for approval of a water lease agreement.
- 40 (9) A request for release from priority pursuant to Section 10504.

1 (10) An application for an assignment of a state-filed application
2 pursuant to Section 10504.

3 (11) A statement of water diversion and use pursuant to Part
4 5.1 (commencing with Section 5100).

5 (c) The board shall set the fee schedule authorized by this section
6 so that the total amount of fees collected pursuant to this section
7 equals that amount necessary to recover costs incurred in
8 connection with the issuance, administration, review, monitoring,
9 and enforcement of permits, licenses, certificates, and registrations
10 to appropriate water, water leases, statements of diversion and use,
11 and orders approving changes in point of discharge, place of use,
12 or purpose of use of treated wastewater. The board may include,
13 as recoverable costs, but is not limited to including, the costs
14 incurred in reviewing applications, registrations, statements of
15 diversion and use, petitions and requests, prescribing terms of
16 permits, licenses, registrations, and change orders, enforcing and
17 evaluating compliance with permits, licenses, certificates,
18 registrations, change orders, and water leases, inspection,
19 monitoring, planning, modeling, reviewing documents prepared
20 for the purpose of regulating the diversion and use of water,
21 applying and enforcing the public trust doctrine, Section 275, the
22 prohibition set forth in Section 1052 against the unauthorized
23 diversion or use of water subject to this division, the requirements
24 under Part 5.1 (commencing with Section 5100) for filing
25 statements of diversion and use, and the administrative costs
26 incurred in connection with carrying out these actions.

27 (d) (1) The board shall adopt the schedule of fees authorized
28 under this section as emergency regulations in accordance with
29 Section 1530.

30 (2) For filings subject to subdivision (b), the schedule may
31 provide for a single filing fee or for an initial filing fee followed
32 by an annual fee, as appropriate to the type of filing involved, and
33 may include supplemental fees for filings that have already been
34 made but have not yet been acted upon by the board at the time
35 the schedule of fees takes effect.

36 (3) The board shall set the amount of total revenue collected
37 each year through the fees authorized by this section at an amount
38 equal to the revenue levels set forth in the annual Budget Act for
39 this activity. The board shall review and revise the fees each fiscal
40 year as necessary to conform with the revenue levels set forth in

1 the annual Budget Act. If the board determines that the revenue
2 collected during the preceding year was greater than, or less than,
3 the revenue levels set forth in the annual Budget Act, the board
4 may further adjust the annual fees to compensate for the over or
5 under collection of revenue.

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

8 (f) Fees imposed on holders of riparian water rights or rights to
9 water appropriated prior to December 19, 1914, pursuant to this
10 chapter shall bear a fair or reasonable relationship to the payor's
11 burden on, or benefits from, the board's water rights program
12 funded by those fees.

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

14 1535. (a) Any fee subject to this chapter that is required in
15 connection with the filing of an application, registration, request,
16 statement, or proof of claim, other than an annual fee required after
17 the period covered by the initial filing fee, shall be paid to the
18 board.

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

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

25 1538. (a) In any proceeding pursuant to Section 1052 in which
26 it is determined that there has been a violation of the prohibition
27 against the unauthorized diversion or use of water subject to this
28 division, the board or court, as the case may be, may impose an
29 additional liability in the amount of 150 percent of any annual fees
30 that would have been required under this division if the diversion
31 or use had been authorized by a permit or license to appropriate
32 water.

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

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

5 SEC. 51. Section 1550 of the Water Code is amended to read:

6 1550. (a) There is in the State Treasury a Water Rights Fund,
7 which is hereby established.

8 (b) There is hereby established the Water Rights Protection
9 Subaccount in the Water Rights Fund. It is the intent of the
10 Legislature that the moneys in the Water Rights Protection
11 Subaccount be available for expenditure, upon appropriation by
12 the Legislature, to reduce fees on water right holders, for water
13 restoration projects, conservancies, and for General Fund purposes.

14 SEC. 52. Section 1551 of the Water Code is amended to read:

15 1551. All of the following shall be deposited in the Water
16 Rights Fund:

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

20 (b) All funds collected under Section 1052, Article 4
21 (commencing with Section 1845) of Chapter 12, and Section 5107.

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

25 SEC. 53. Section 1825 of the Water Code is amended to read:

26 1825. It is the intent of the Legislature that the state should
27 take vigorous action to enforce the terms and conditions of permits,
28 licenses, certifications, and registrations to appropriate water, to
29 enforce state board orders and decisions, to prevent the unlawful
30 diversion of water, and to prevent the waste, unreasonable use,
31 unreasonable method of use, or unreasonable method of diversion,
32 of water, and to enforce reporting and monitoring requirements.

33 SEC. 54. Section 1826 is added to the Water Code, to read:

34 1826. The board shall establish a schedule of penalties that
35 applies to small farms for de minimis water right violations under
36 this division.

37 SEC. 55. Section 1845 of the Water Code is amended to read:

38 1845. (a) Upon the failure of any person to comply with a
39 cease and desist order issued by the board pursuant to this chapter,
40 the Attorney General, upon the request of the board, shall petition

1 the superior court for the issuance of prohibitory or mandatory
2 injunctive relief as appropriate, including a temporary restraining
3 order, preliminary injunction, or permanent injunction.

4 (b) (1) Any person or entity who violates a cease and desist
5 order issued pursuant to this chapter may be liable in an amount
6 not to exceed the greater of either of the following amounts:

7 (A) One thousand dollars (\$1,000) for each day in which the
8 violation occurs for the first enforcement proceeding or five
9 thousand (\$5,000) for each day in which the violation occurs for
10 any subsequent enforcement proceeding.

11 (B) The highest market value of the water.

12 (2) Civil liability may be imposed by the superior court. The
13 Attorney General, upon the request of the board, shall petition the
14 superior court to impose, assess, and recover those sums.

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

17 (c) In determining the appropriate amount, the court, or the
18 board, as the case may be, shall take into consideration all relevant
19 circumstances, including, but not limited to, the extent of harm
20 caused by the violation, the nature and persistence of the violation,
21 the length of time over which the violation occurs, and, with respect
22 to the violator, the ability to pay, the effect on the ability to
23 continue in business, the corrective action, if any, taken by the
24 violator, and other matters as justice may require.

25 (d) (1) All funds recovered pursuant to this section shall be
26 deposited in the Water Rights Fund established pursuant to Section
27 1550.

28 (2) Any funds recovered pursuant to this section that exceed
29 the amounts that were authorized before the effective date of the
30 amendments made to this section by ____ of the 2009–10 Seventh
31 Extraordinary Session of the Legislature shall be deposited in the
32 Water Rights Protection Subaccount in the Water Rights Funds
33 established pursuant to Section 1550.

34 SEC. 56. Section 1846 is added to the Water Code, to read:

35 1846. (a) Any person or entity subject to a monitoring or
36 reporting requirement specified in subdivision (f) who violates
37 that reporting or monitoring requirement, makes a material
38 misstatement in any record or report submitted under that reporting
39 or monitoring requirement, or tampers with or renders inaccurate
40 any monitoring device required under that reporting or monitoring

1 requirement shall be liable for a sum not to exceed five hundred
2 dollars (\$500) for each day in which the violation occurs.

3 (b) Civil liability may be imposed by the superior court. The
4 Attorney General, upon the request of the board, shall petition the
5 superior court to impose, assess, and recover those sums.

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

8 (d) In determining the appropriate amount, the court, or the
9 board, as the case may be, shall take into consideration all relevant
10 circumstances, including, but not limited to, the extent of harm
11 caused by the violation, the nature and persistence of the violation,
12 the length of time over which the violation occurs, and, with respect
13 to the violator, the ability to pay, the effect on the ability to
14 continue in business, the corrective action, if any, taken by the
15 violator, and other matters as justice may require.

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

19 (f) (1) This section applies to any reporting or monitoring
20 requirement established under any permit, license, certificate,
21 registration, decision or order, or regulation issued by the board
22 pursuant to this division, Section 275, Article 7 (commencing with
23 Section 13550) of Division 7, or the public trust doctrine.

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

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

31 SEC. 57. Section 1847 is added to the Water Code, to read:

32 1847. (a) Any person or entity who violates any term or
33 condition of a permit, license, certificate, or registration issued
34 under this division or any order or regulation adopted by the board
35 under Section 275 may be liable in an amount not to exceed five
36 hundred dollars (\$500) for each day in which the violation occurs.

37 (b) Civil liability may be imposed by the superior court. The
38 Attorney General, upon the request of the board, shall petition the
39 superior court to impose, assess, and recover those sums.

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

3 (d) In determining the appropriate amount, the court, or the
4 board, as the case may be, shall take into consideration all relevant
5 circumstances, including, but not limited to, the extent of harm
6 caused by the violation, the nature and persistence of the violation,
7 the length of time over which the violation occurs, and, with respect
8 to the violator, the ability to pay, the effect on the ability to
9 continue in business, the corrective action, if any, taken by the
10 violator, and other matters as justice may require.

11 (e) No liability shall be recoverable under this section for any
12 violation for which liability is recovered under Section 1052 or
13 1846.

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

17 SEC. 58. Section 2525 of the Water Code is amended to read:

18 2525. Upon petition signed by one or more claimants to water
19 of any stream system, requesting the determination of the rights
20 of the various claimants to the water of that stream system, the
21 board shall, if, upon investigation, it finds the facts and conditions
22 are such that the public interest and necessity will be served by a
23 determination of the water rights involved, enter an order granting
24 the petition and make proper arrangements to proceed with the
25 determination. The board may initiate a determination of rights
26 under its own motion if after a hearing it finds, based on substantial
27 evidence, that the public interest and necessity will be served by
28 a determination of the rights involved.

29 SEC. 59. Section 2526 of the Water Code is amended to read:

30 2526. As soon as practicable after granting the petition or
31 motion the board shall prepare and issue a notice setting forth the
32 following:

33 (a) The facts of the entry of the order and of the pendency of
34 the proceedings.

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

39 (c) The date prior to which all claimants to rights to the water
40 of the stream system shall notify the board in writing of their

1 intention to file proof of claim and the address to which all
2 subsequent notices to the claimant relating to the proceedings may
3 be sent.

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

7 SEC. 60. Section 2550 of the Water Code is amended to read:

8 2550. As soon as practicable after granting the petition or
9 motion, the board shall begin an investigation of the stream system,
10 of the diversion of water, of all beneficial uses being made of the
11 water, and of the water supply available for those uses, and shall
12 gather such other data and information as may be essential to the
13 proper determination of the water rights in the stream system.

14 SEC. 61. Section 2763.5 of the Water Code is amended to read:

15 2763.5. (a) No exception to the order of determination shall
16 be considered, except in the court's discretion for good cause
17 shown, unless the matter of the exception was presented to the
18 board in the form of an objection. Good cause includes, but is not
19 limited to, the existence of newly discovered relevant evidence
20 which, in the exercise of reasonable diligence, could not have been
21 presented to the board during the board's proceedings.

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

27 SEC. 62. Section 5100 of the Water Code is amended to read:

28 5100. As used in this part:

29 (a) "Best available technologies" means technologies at the
30 highest technically practical level, using flow totaling devices, and
31 if necessary, data loggers and telemetry.

32 (b) "Best professional practices" means practices attaining and
33 maintaining the accuracy of measurement and reporting devices
34 and methods.

35 (c) "Diversion" means taking water by gravity or pumping from
36 a surface stream or subterranean stream flowing through a known
37 and definite channel, or other body of surface water, into a canal,
38 pipeline, or other conduit, and includes impoundment of water in
39 a reservoir.

1 (d) “Person” means all persons whether natural or artificial,
2 including the United States of America, State of California, and
3 all political subdivisions, districts, municipalities, and public
4 agencies.

5 SEC. 63. Section 5101 of the Water Code is amended to read:

6 5101. Each person who, after December 31, 1965, diverts water
7 shall file with the board, prior to July 1 of the succeeding year, a
8 statement of his or her diversion and use, except that a statement
9 is not required to be filed if the diversion is any of the following:

10 (a) From a spring that does not flow off the property on which
11 it is located and from which the person’s aggregate diversions do
12 not exceed 25 acre-feet in any year.

13 (b) Covered by a registration for small domestic or livestock
14 stockpond uses, or permit or license to appropriate water on file
15 with the board.

16 (c) Included in a notice filed pursuant to Part 5 (commencing
17 with Section 4999).

18 (d) Regulated by a watermaster appointed by the department
19 and included in annual reports filed with a court or the board by
20 the watermaster, which reports identify the persons who have
21 diverted water and describe the general purposes and the place,
22 the use, and the quantity of water that has been diverted from each
23 source.

24 (e) Included in annual reports filed with a court or the board by
25 a watermaster appointed by a court or pursuant to statute to
26 administer a final judgment determining rights to water, which
27 reports identify the persons who have diverted water and give the
28 general place of use and the quantity of water that has been diverted
29 from each source.

30 (f) For use in compliance with Article 2.5 (commencing with
31 Section 1226) or Article 2.7 (commencing with Section 1228) of
32 Chapter 1 of Part 2.

33 (g) A diversion that occurs before January 1, 2009, if any of the
34 following applies:

35 (1) The diversion is from a spring that does not flow off the
36 property on which it is located, and the person’s aggregate
37 diversions exceed 25 acre-feet in any year.

38 (2) The diversion is covered by an application to appropriate
39 water on file with the board.

1 (3) The diversion is reported by the department in its hydrologic
2 data bulletins.

3 (4) The diversion is included in the consumptive use data for
4 the Delta lowlands published by the department in its hydrologic
5 data bulletins.

6 SEC. 64. Section 5103 of the Water Code is amended to read:

7 5103. Each statement shall be prepared on a form provided by
8 the board. The statement shall include all of the following
9 information:

10 (a) The name and address of the person who diverted water and
11 of the person filing the statement.

12 (b) The name of the stream or other source from which water
13 was diverted, and the name of the next major stream or other body
14 of water to which the source is tributary.

15 (c) The place of diversion. The location of the diversion works
16 shall be depicted on a specific United States Geological Survey
17 topographic map, or shall be identified using the California
18 Coordinate System, or latitude and longitude measurements. If
19 assigned, the public land description to the nearest 40-acre
20 subdivision and the assessor's parcel number shall also be provided.

21 (d) The capacity of the diversion works and of the storage
22 reservoir, if any, and the months in which water was used during
23 the preceding calendar year.

24 (e) (1) On and after January 1, 2012, monthly records of water
25 diversions. The measurements of the diversion shall be made using
26 best available technologies and best professional practices. Nothing
27 in this paragraph shall be construed to require the implementation
28 of technologies or practices by a person who provides to the board
29 documentation demonstrating that the implementation of those
30 practices is not locally cost effective.

31 (2) (A) The terms of, and eligibility for, any grant or loan
32 awarded or administered by the department, the board, or the
33 California Bay-Delta Authority or its successor on behalf of a
34 person that is subject to paragraph (1) shall be conditioned on
35 compliance with that paragraph.

36 (B) Notwithstanding subparagraph (A), the board may determine
37 that a person is eligible for a grant or loan even though the person
38 is not complying with paragraph (1), if both of the following apply:

39 (i) The board determines that the grant or loan will assist the
40 grantee or loan recipient in complying with paragraph (1).

1 (ii) The person has submitted to the board a one-year schedule
2 for complying with paragraph (1).

3 (C) It is the intent of the Legislature that the requirements of
4 this subdivision shall complement and not affect the scope of
5 authority granted to the board by provisions of law other than this
6 article.

7 (f) The purpose of use.

8 (g) A general description of the area in which the water was
9 used. The location of the place of use shall be depicted on a specific
10 United States Geological Survey topographic map and on any other
11 maps with identifiable landmarks. If assigned, the public land
12 description to the nearest 40-acre subdivision and the assessor's
13 parcel number shall also be provided.

14 (h) The year in which the diversion was commenced as near as
15 is known.

16 SEC. 65. Section 5106 of the Water Code is amended to read:

17 5106. (a) Neither the statements submitted under this part nor
18 the determination of facts by the board pursuant to Section 5105
19 shall establish or constitute evidence of a right to divert or use
20 water.

21 (b) (1) The board may rely on the names and addresses included
22 in statements submitted under this part for the purpose of
23 determining the names and addresses of persons who are to receive
24 notices with regard to proceedings before the board.

25 (2) Notwithstanding paragraph (1), any person may submit, in
26 writing, a request to the board to provide notification to a different
27 address, and the board shall provide the notification to that address.

28 (3) If the board provides notice to persons who file statements
29 under this part, the notice shall not be determined to be inadequate
30 on the basis that notice was not received by a person, other than a
31 party to whom the board's action is directed, who fails to file a
32 statement required to be filed under this part.

33 (4) This subdivision does not affect the requirement in Section
34 2527 to provide notice to all persons who own land that appears
35 to be riparian to the stream system.

36 (c) In any proceeding before the board to determine whether an
37 application for a permit to appropriate water should be approved,
38 any statement submitted under this part or determination by the
39 board pursuant to Section 5105 is evidence of the facts stated
40 therein.

1 (d) (1) In any proceeding before the board in which it is alleged
2 that an appropriative right has ceased or is subject to forfeiture for
3 nonuse because water has not been put to beneficial use, there shall
4 be a rebuttable presumption that no use required to be included in
5 a statement submitted under this part occurred unless that use is
6 included in a statement submitted under this part and that the
7 statement is submitted within six months after it is required to be
8 filed with the board.

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

11 SEC. 66. Section 5107 of the Water Code is amended to read:

12 5107. (a) The making of any willful misstatement pursuant to
13 this part is a misdemeanor punishable by a fine not exceeding one
14 thousand dollars (\$1,000) or by imprisonment in the county jail
15 for not to exceed six months, or both.

16 (b) Any person who fails to file a statement required to be filed
17 under this part for a diversion or use that occurs after January 1,
18 2009, who tampers with any measuring device, or who makes a
19 material misstatement pursuant to this part may be liable civilly
20 as provided in subdivisions (c) and (d).

21 (c) Civil liability may be administratively imposed by the board
22 pursuant to Section 1055 in an amount not to exceed the following
23 amounts:

24 (1) For failure to file a statement, one thousand dollars (\$1,000),
25 plus five hundred dollars (\$500) per day for each additional day
26 on which the violation continues if the person fails to file a
27 statement within 30 days after the board has called the violation
28 to the attention of that person.

29 (2) For a violation resulting from a physical malfunction of a
30 measuring device not caused by the person or any other
31 unintentional misstatement, two hundred fifty dollars (\$250), plus
32 two hundred fifty dollars (\$250) per day for each additional day
33 on which the measuring device continues to malfunction or the
34 misstatement is not corrected if the person fails to correct or repair
35 the measuring device or correct the misstatement within 60 days
36 after the board has called the malfunction or violation to the
37 attention of that person.

38 (3) For knowingly tampering with any measuring device or
39 knowingly making a material misstatement in a statement filed
40 under this part, twenty-five thousand dollars (\$25,000), plus one

1 thousand dollars (\$1,000) for each day on which the violation
2 continues if the person fails to correct the violation within 30 days
3 after the board has called the violation to the attention of that
4 person.

5 (4) For any other violation, five hundred dollars (\$500), plus
6 two hundred fifty dollars (\$250) for each additional day on which
7 the violation continues if the person fails to correct the violation
8 within 30 days after the board has called the violation to the
9 attention of that person.

10 (d) When an additional penalty may be imposed under
11 subdivision (c) for failure to correct a violation or correct or repair
12 a malfunctioning measuring device within a specified period after
13 the violation has been called to a person’s attention by the board,
14 the board, for good cause, may provide for a longer period for
15 correction of the problem, and the additional penalty shall not
16 apply if the violation is corrected within the period specified by
17 the board.

18 (e) In determining the appropriate amount, the board shall
19 consider all relevant circumstances, including, but not limited to,
20 all of the following factors:

- 21 (1) The extent of harm caused by the violation.
- 22 (2) The nature and persistence of the violation.
- 23 (3) The length of time over which the violation occurs.
- 24 (4) Any corrective action undertaken by the violator.
- 25 (5) The ability of the violator to pay.
- 26 (6) The effect on the ability of the violator to continue in
27 business.
- 28 (7) Other matters as justice may require.

29 (f) (1) All funds recovered pursuant to this section shall be
30 deposited in the Water Rights Fund established pursuant to Section
31 1550.

32 (2) Any funds recovered pursuant to this section that exceed
33 those that were authorized before the effective date of the
34 amendments made to this section by ____ of the 2009–10 Seventh
35 Extraordinary Session of the Legislature shall be deposited in the
36 Water Rights Protection Subaccount in the Water Rights Fund
37 established pursuant to Section 1550.

38 (g) Remedies under this section are in addition to, and do not
39 supersede or limit, any other remedies, civil or criminal.

40 SEC. 67. Section 5108 of the Water Code is repealed.

1 SEC. 68. Part 2.55 (commencing with Section 10608) is added
2 to Division 6 of the Water Code, to read:

3
4 PART 2.55. SUSTAINABLE WATER USE AND DEMAND
5 REDUCTION

6
7 CHAPTER 1. GENERAL DECLARATIONS AND POLICY

8
9 10608. The Legislature finds and declares all of the following:

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

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

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

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

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

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

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

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

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

1 considered when assessing per capita water use as a measure of
2 efficiency.

3 10608.4. It is the intent of the Legislature, by the enactment
4 of this part, to do all of the following:

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

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

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

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

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

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

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

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

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

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

32 (k) Advance regional water resources management.

33 10608.8. (a) (1) Water use efficiency measures adopted and
34 implemented pursuant to this part or Part 2.8 (commencing with
35 Section 10800) are water conservation measures subject to the
36 protections provided under Section 1011.

37 ~~(2) An urban water supplier’s failure to meet the per capita~~
38 ~~targets established in Section 10608.20 shall not be evidence of~~
39 ~~waste or unreasonable use under Section 2 of Article X of the~~
40 ~~California Constitution or Section 100. Nothing in this paragraph~~

1 ~~limits the use of data reported to the department or the board in~~
2 ~~litigation or an administrative proceeding. This paragraph shall~~
3 ~~become inoperative on January 1, 2020.~~

4 (2) *Because an urban agency is not required to meet its urban*
5 *water use target until 2020 pursuant to subdivision (b) of Section*
6 *10608.24, an urban retail water supplier’s failure to meet those*
7 *targets shall not establish a violation of law for purposes of any*
8 *state administrative or judicial proceeding prior to January 1,*
9 *2021. Nothing in this paragraph limits the use of data reported to*
10 *the department or the board in litigation or an administrative*
11 *proceeding. This paragraph shall become inoperative on January*
12 *1, 2021.*

13 (3) To the extent feasible, the department and the board shall
14 provide for the use of water conservation reports required under
15 this part to meet the requirements of Section 1011 for water
16 conservation reporting.

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

22 (c) This part does not require a reduction in the total water used
23 in the agricultural or urban sectors, because other factors, including,
24 but not limited to, changes in agricultural economics or population
25 growth may have greater effects on water use. This part does not
26 limit the economic productivity of California’s agricultural,
27 commercial, or industrial sectors.

28 (d) The requirements of this part do not apply to an agricultural
29 water supplier that is a party to the Quantification Settlement
30 Agreement, as defined in subdivision (a) of Section 1 of Chapter
31 617 of the Statutes of 2002, during the period within which the
32 Quantification Settlement Agreement remains in effect. After the
33 expiration of the Quantification Settlement Agreement, to the
34 extent conservation water projects implemented as part of the
35 Quantification Settlement Agreement remain in effect, the
36 conserved water created as part of those projects shall be credited
37 against the obligations of the agricultural water supplier pursuant
38 to this part.

CHAPTER 2. DEFINITIONS

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10608.12. Unless the context otherwise requires, the following definitions govern the construction of this part:

(a) “Agricultural water supplier” means a water supplier, either publicly or privately owned, providing water to 10,000 or more irrigated acres, excluding recycled water. “Agricultural water supplier” includes a supplier or contractor for water, regardless of the basis of right, that distributes or sells water for ultimate resale to customers.

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

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

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

(3) For the purposes of Section 10608.22, the urban retail water supplier’s estimate of its average gross water use, reported in gallons per capita per day and calculated over a continuous five-year period ending no earlier than December 31, 2007, and no later than December 31, 2010.

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

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

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

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

- 1 (g) “Gross water use” means the total volume of water, whether
2 treated or untreated, entering the distribution system of an urban
3 retail water supplier, excluding all of the following:
- 4 (1) Recycled water that is delivered within the service area of
5 an urban retail water supplier or its urban wholesale water supplier.
 - 6 (2) The net volume of water that the urban retail water supplier
7 places into long-term storage.
 - 8 (3) The volume of water the urban retail water supplier conveys
9 for use by another urban water supplier.
 - 10 (4) The volume of water delivered for agricultural use, except
11 as otherwise provided in subdivision (f) of Section 10608.24.
- 12 (h) “Industrial water user” means a water user that is primarily
13 a manufacturer or processor of materials as defined by the North
14 American Industry Classification System code sectors 31 to 33,
15 inclusive, or an entity that is a water user primarily engaged in
16 research and development.
- 17 (i) “Institutional water user” means a water user dedicated to
18 public service. This type of user includes, among other users,
19 higher education institutions, schools, courts, churches, hospitals,
20 government facilities, and nonprofit research institutions.
- 21 (j) “Interim urban water use target” means the midpoint between
22 the urban retail water supplier’s base daily per capita water use
23 and the urban retail water supplier’s urban water use target for
24 2020.
- 25 (k) “Locally cost effective” means that the present value of the
26 local benefits of implementing an agricultural efficiency water
27 management practice is greater than or equal to the present value
28 of the local cost of implementing that measure.
- 29 (l) “Process water” means water used for producing a product
30 or product content or water used for research and development,
31 including, but not limited to, continuous manufacturing processes,
32 water used for testing and maintaining equipment used in producing
33 a product or product content, and water used in combined heat and
34 power facilities used in producing a product or product content.
35 Process water does not mean incidental water uses not related to
36 the production of a product or product content, including, but not
37 limited to, water used for restrooms, landscaping, air conditioning,
38 heating, kitchens, and laundry.
- 39 (m) “Recycled water” means recycled water, as defined in
40 subdivision (n) of Section 13050, that is used to offset potable

1 demand, including recycled water supplied for direct use and
2 indirect potable reuse, that meets the following requirements, where
3 applicable:

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

6 (A) Metered.

7 (B) Developed through planned investment by the urban water
8 supplier or a wastewater treatment agency.

9 (C) Treated to a minimum tertiary level.

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

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

16 (n) “Regional water resources management” means sources of
17 supply resulting from watershed-based planning for sustainable
18 local water reliability or any of the following alternative sources
19 of water:

20 (1) The capture and reuse of stormwater or rainwater.

21 (2) The use of recycled water.

22 (3) The desalination of brackish groundwater.

23 (4) The conjunctive use of surface water and groundwater in a
24 manner that is consistent with the safe yield of the groundwater
25 basin.

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

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

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

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

CHAPTER 3. URBAN RETAIL WATER SUPPLIERS

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

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

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

1 (C) For commercial, industrial, and institutional uses, a
2 10-percent reduction in water use from the baseline commercial,
3 industrial, and institutional water use by 2020.

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

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

20 (A) Consider climatic differences within the state.

21 (B) Consider population density differences within the state.

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

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

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

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

31 (c) The department shall update the method described in
32 paragraph (4) of subdivision (b) and report to the Legislature by
33 December 31, 2014. An urban retail water supplier that adopted
34 the method described in paragraph (4) of subdivision (b) may adopt
35 a new urban daily per capita water use target pursuant to this
36 updated method.

37 (d) An urban retail water supplier shall include in its urban water
38 management plan required pursuant to Part 2.6 (commencing with
39 Section 10610) due in 2010 the baseline daily per capita water use,
40 urban water use target, interim urban water use target, and

1 compliance daily per capita water use, along with the bases for
2 determining those estimates, including references to supporting
3 data.

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

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

10 (g) (1) The department, through a public process and in
11 consultation with the California Urban Water Conservation
12 Council, shall develop technical methodologies and criteria for
13 the consistent implementation of this part, including, but not limited
14 to, both of the following:

15 (A) Methodologies for calculating base daily per capita water
16 use, baseline commercial, industrial, and institutional water use,
17 compliance daily per capita water use, gross water use, service
18 area population, indoor residential water use, and landscaped area
19 water use.

20 (B) Criteria for adjustments pursuant to subdivisions (d) and
21 (e) of Section 10608.24.

22 (2) The department shall post the methodologies and criteria
23 developed pursuant to this subdivision on its Internet Web site,
24 and make written copies available, by October 1, 2010. An urban
25 retail water supplier shall use the methods developed by the
26 department in compliance with this part.

27 (h) (1) The department shall adopt regulations for
28 implementation of the provisions relating to process water in
29 accordance with subdivision (l) of Section 10608.12, subdivision
30 (e) of Section 10608.24, and subdivision (d) of Section 10608.26.

31 (2) The initial adoption of a regulation authorized by this
32 subdivision is deemed to address an emergency, for purposes of
33 Sections 11346.1 and 11349.6 of the Government Code, and the
34 department is hereby exempted for that purpose from the
35 requirements of subdivision (b) of Section 11346.1 of the
36 Government Code. After the initial adoption of an emergency
37 regulation pursuant to this subdivision, the department shall not
38 request approval from the Office of Administrative Law to readopt
39 the regulation as an emergency regulation pursuant to Section
40 11346.1 of the Government Code.

1 (i) An urban retail water supplier shall be granted an extension
2 to July 1, 2011, for adoption of an urban water management plan
3 pursuant to Part 2.6 (commencing with Section 10610) due in 2010
4 to allow use of technical methodologies developed by the
5 department pursuant to paragraph (4) of subdivision (b) and
6 subdivision (g). An urban retail water supplier that adopts an urban
7 water management plan due in 2010 that does not use the
8 methodologies developed by the department pursuant to
9 subdivision (g) shall amend the plan by July 1, 2011, to comply
10 with this part.

11 10608.22. Notwithstanding the method adopted by an urban
12 retail water supplier pursuant to Section 10608.20, an urban retail
13 water supplier's per capita daily water use reduction shall be no
14 less than 5 percent of base daily per capita water use as defined in
15 paragraph (3) of subdivision (b) of Section 10608.12. This section
16 does not apply to an urban retail water supplier with a base daily
17 per capita water use at or below 100 gallons per capita per day.

18 10608.24. (a) Each urban retail water supplier shall meet its
19 interim urban water use target by December 31, 2015.

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

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

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

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

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

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

37 (2) If the urban retail water supplier elects to adjust its estimate
38 of compliance daily per capita water use due to one or more of the
39 factors described in paragraph (1), it shall provide the basis for,

1 and data supporting, the adjustment in the report required by
2 Section 10608.40.

3 (e) When developing the urban water use target pursuant to
4 Section 10608.20, an urban retail water supplier that has a
5 substantial percentage of industrial water use in its service area,
6 may exclude process water from the calculation of gross water use
7 to avoid a disproportionate burden on another customer sector.

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

18 (2) An urban retail water supplier, that is also an agricultural
19 water supplier, is not subject to the requirements of Chapter 4
20 (commencing with Section 10608.48), if the agricultural water use
21 is incorporated into its urban water use target pursuant to paragraph
22 (1).

23 10608.26. (a) In complying with this part, an urban retail water
24 supplier shall conduct at least one public hearing to accomplish
25 all of the following:

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

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

30 (3) Adopt a method, pursuant to subdivision (b) of Section
31 10608.20, for determining its urban water use target.

32 (b) In complying with this part, an urban retail water supplier
33 may meet its urban water use target through efficiency
34 improvements in any combination among its customer sectors. An
35 urban retail water supplier shall avoid placing a disproportionate
36 burden on any customer sector.

37 (c) For an urban retail water supplier that supplies water to a
38 United States Department of Defense military installation, the
39 urban retail water supplier's implementation plan for complying
40 with this part shall consider the United States Department of

1 Defense military installation's requirements under federal
2 Executive Order 13423.

3 (d) (1) Any ordinance or resolution adopted by an urban retail
4 water supplier after the effective date of this section shall not
5 require existing customers as of the effective date of this section,
6 to undertake changes in product formulation, operations, or
7 equipment that would reduce process water use, but may provide
8 technical assistance and financial incentives to those customers to
9 implement efficiency measures for process water. This section
10 shall not affect the operation of an ordinance or resolution adopted
11 under Section 375 prior to the effective date of this section.

12 (2) This part shall not be construed or enforced so as to interfere
13 with the requirements of Chapter 4 (commencing with Section
14 113980) to Chapter 13 (commencing with Section 114380),
15 inclusive, of Part 7 of Division 104 of the Health and Safety Code,
16 or any requirement or standard for the protection of public health,
17 public safety, or worker safety established by federal, state, or
18 local government or recommended by recognized standard setting
19 organizations or trade associations.

20 10608.28. (a) An urban retail water supplier may meet its
21 urban water use target within its retail service area, or through
22 mutual agreement, by any of the following:

23 (1) Through an urban wholesale water supplier.

24 (2) Through a regional agency authorized to plan and implement
25 water conservation, including, but not limited to, an agency
26 established under the Bay Area Water Supply and Conservation
27 Agency Act (Division 31 (commencing with Section 81300)).

28 (3) Through a regional water management group as defined in
29 Section 10537.

30 (4) By an integrated regional water management funding area.

31 (5) By hydrologic region.

32 (6) Through other appropriate geographic scales for which
33 computation methods have been developed by the department.

34 (b) A regional water management group, with the written
35 consent of its member agencies, may undertake any or all planning,
36 reporting, and implementation functions under this chapter for the
37 member agencies that consent to those activities. Any data or
38 reports shall provide information both for the regional water
39 management group and separately for each consenting urban retail
40 water supplier and urban wholesale water supplier.

1 10608.32. All costs incurred pursuant to this part by a water
2 utility regulated by the Public Utilities Commission may be
3 recoverable in rates subject to review and approval by the Public
4 Utilities Commission, and may be recorded in a memorandum
5 account and reviewed for reasonableness by the Public Utilities
6 Commission.

7 10608.36. Urban wholesale water suppliers shall include in
8 the urban water management plans required pursuant to Part 2.6
9 (commencing with Section 10610) an assessment of their present
10 and proposed future measures, programs, and policies to help
11 achieve the water use reductions required by this part.

12 10608.40. Urban water retail suppliers shall report to the
13 department on their progress in meeting their urban water use
14 targets as part of their urban water management plans submitted
15 pursuant to Section 10631. The data shall be reported using a
16 standardized form developed pursuant to Section 10608.52.

17 10608.42. The department shall review the 2015 urban water
18 management plans and report to the Legislature by December 31,
19 2016, on progress towards achieving a 20-percent reduction in
20 urban water use by December 31, 2020. The report shall include
21 recommendations on changes to water efficiency standards or
22 urban water use targets in order to achieve the 20-percent reduction
23 and to reflect updated efficiency information and technology
24 changes.

25 10608.43. The department, in conjunction with the California
26 Urban Water Conservation Council, by April 1, 2010, shall convene
27 a representative task force consisting of academic experts, urban
28 retail water suppliers, environmental organizations, commercial
29 water users, industrial water users, and institutional water users to
30 develop alternative best management practices for commercial,
31 industrial, and institutional users and an assessment of the potential
32 statewide water use efficiency improvement in the commercial,
33 industrial, and institutional sectors that would result from
34 implementation of these best management practices. The taskforce,
35 in conjunction with the department, shall submit a report to the
36 Legislature by April 1, 2012, that shall include a review of multiple
37 sectors within commercial, industrial, and institutional users and
38 that shall recommend water use efficiency standards for
39 commercial, industrial, and institutional users among various

1 sectors of water use. The report shall include, but not be limited
2 to, the following:

3 (a) Appropriate metrics for evaluating commercial, industrial,
4 and institutional water use.

5 (b) Evaluation of water demands for manufacturing processes,
6 goods, and cooling.

7 (c) Evaluation of public infrastructure necessary for delivery of
8 recycled water to the commercial, industrial, and institutional
9 sectors.

10 (d) Evaluation of institutional and economic barriers to increased
11 recycled water use within the commercial, industrial, and
12 institutional sectors.

13 (e) Identification of technical feasibility and cost of the best
14 management practices to achieve more efficient water use statewide
15 in the commercial, industrial, and institutional sectors that is
16 consistent with the public interest and reflects past investments in
17 water use efficiency.

18 10608.44. Each state agency shall reduce water use on facilities
19 it operates to support urban retail water suppliers in meeting the
20 target identified in Section 10608.16.

21

22 CHAPTER 4. AGRICULTURAL WATER SUPPLIERS

23

24 10608.48. (a) On or before July 31, 2012, an agricultural water
25 supplier shall implement efficient water management practices
26 pursuant to subdivisions (b) and (c).

27 (b) Agricultural water suppliers shall implement all of the
28 following critical efficient management practices:

29 (1) Measure the volume of water delivered to customers with
30 sufficient accuracy to comply with subdivision (a) of Section
31 531.10 and to implement volumetric pricing pursuant to paragraph

32 (2).

33 (2) Adopt a pricing structure for water customers based at least
34 in part on quantity delivered.

35 (c) Agricultural water suppliers shall implement additional
36 efficient management practices, including, but not limited to,
37 practices to accomplish all of the following, if the measures are
38 locally cost effective and technically feasible:

- 1 (1) Facilitate alternative land use for lands with exceptionally
2 high water duties or whose irrigation contributes to significant
3 problems, including drainage.
- 4 (2) Facilitate use of available recycled water that otherwise
5 would not be used beneficially, meets all health and safety criteria,
6 and does not harm crops or soils.
- 7 (3) Facilitate the financing of capital improvements for on-farm
8 irrigation systems.
- 9 (4) Implement an incentive pricing structure that promotes one
10 or more of the following goals:
 - 11 (A) More efficient water use at the farm level.
 - 12 (B) Conjunctive use of groundwater.
 - 13 (C) Appropriate increase of groundwater recharge.
 - 14 (D) Reduction in problem drainage.
 - 15 (E) Improved management of environmental resources.
 - 16 (F) Effective management of all water sources throughout the
17 year by adjusting seasonal pricing structures based on current
18 conditions.
- 19 (5) Expand line or pipe distribution systems, and construct
20 regulatory reservoirs to increase distribution system flexibility and
21 capacity, decrease maintenance, and reduce seepage.
- 22 (6) Increase flexibility in water ordering by, and delivery to,
23 water customers within operational limits.
- 24 (7) Construct and operate supplier spill and tailwater recovery
25 systems.
- 26 (8) Increase planned conjunctive use of surface water and
27 groundwater within the supplier service area.
- 28 (9) Automate canal control structures.
- 29 (10) Facilitate or promote customer pump testing and evaluation.
- 30 (11) Designate a water conservation coordinator who will
31 develop and implement the water management plan and prepare
32 progress reports.
- 33 (12) Provide for the availability of water management services
34 to water users. These services may include, but are not limited to,
35 all of the following:
 - 36 (A) On-farm irrigation and drainage system evaluations.
 - 37 (B) Normal year and real-time irrigation scheduling and crop
38 evapotranspiration information.
 - 39 (C) Surface water, groundwater, and drainage water quantity
40 and quality data.

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

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

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

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

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

21 (f) An agricultural water supplier may meet the requirements
22 of subdivisions (d) and (e) by submitting to the department a water
23 conservation plan submitted to the United States Bureau of
24 Reclamation that meets the requirements described in Section
25 10828.

26 (g) On or before December 31, 2013, December 31, 2016, and
27 December 31, 2021, the department, in consultation with the board,
28 shall submit to the Legislature a report on the agricultural efficient
29 water management practices that have been implemented and are
30 planned to be implemented and an assessment of the manner in
31 which the implementation of those efficient water management
32 practices has affected and will affect agricultural operations,
33 including estimated water use efficiency improvements, if any.

34 (h) The department may update the efficient water management
35 practices required pursuant to subdivision (c), in consultation with
36 the Agricultural Water Management Council, the United States
37 Bureau of Reclamation, and the board. All efficient water
38 management practices for agricultural water use pursuant to this
39 chapter shall be adopted or revised by the department only after

1 the department conducts public hearings to allow participation of
2 the diverse geographical areas and interests of the state.

3 (i) (1) The department shall adopt regulations that provide for
4 a range of options that agricultural water suppliers may use or
5 implement to comply with the measurement requirement in
6 paragraph (1) of subdivision (b).

7 (2) The initial adoption of a regulation authorized by this
8 subdivision is deemed to address an emergency, for purposes of
9 Sections 11346.1 and 11349.6 of the Government Code, and the
10 department is hereby exempted for that purpose from the
11 requirements of subdivision (b) of Section 11346.1 of the
12 Government Code. After the initial adoption of an emergency
13 regulation pursuant to this subdivision, the department shall not
14 request approval from the Office of Administrative Law to readopt
15 the regulation as an emergency regulation pursuant to Section
16 11346.1 of the Government Code.

17
18 CHAPTER 5. SUSTAINABLE WATER MANAGEMENT
19

20 10608.50. (a) The department, in consultation with the board,
21 shall promote implementation of regional water resources
22 management practices through increased incentives and removal
23 of barriers consistent with state and federal law. Potential changes
24 may include, but are not limited to, all of the following:

25 (1) Revisions to the requirements for urban and agricultural
26 water management plans.

27 (2) Revisions to the requirements for integrated regional water
28 management plans.

29 (3) Revisions to the eligibility for state water management grants
30 and loans.

31 (4) Revisions to state or local permitting requirements that
32 increase water supply opportunities, but do not weaken water
33 quality protection under state and federal law.

34 (5) Increased funding for research, feasibility studies, and project
35 construction.

36 (6) Expanding technical and educational support for local land
37 use and water management agencies.

38 (b) No later than January 1, 2011, and updated as part of the
39 California Water Plan, the department, in consultation with the
40 board, and with public input, shall propose new statewide targets,

1 or review and update existing statewide targets, for regional water
2 resources management practices, including, but not limited to,
3 recycled water, brackish groundwater desalination, and infiltration
4 and direct use of urban stormwater runoff.

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CHAPTER 6. STANDARDIZED DATA COLLECTION

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CHAPTER 7. FUNDING PROVISIONS

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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

1 or loan agreement, for achieving the per capita reductions. The
2 supplier may request grant or loan funds to achieve the per capita
3 reductions to the extent the request is consistent with the eligibility
4 requirements applicable to the water funds.

5 (d) Notwithstanding subdivision (b), the department shall
6 determine that an agricultural water supplier is eligible for a water
7 grant or loan even though the supplier is not implementing all of
8 the efficient water management practices described in Section
9 10608.48, if the agricultural water supplier has submitted to the
10 department for approval a schedule, financing plan, and budget,
11 to be included in the grant or loan agreement, for implementation
12 of the efficient water management practices. The supplier may
13 request grant or loan funds to implement the efficient water
14 management practices to the extent the request is consistent with
15 the eligibility requirements applicable to the water funds.

16 (e) Notwithstanding subdivision (a), the department shall
17 determine that an urban retail water supplier is eligible for a water
18 grant or loan even though the supplier has not met the per capita
19 reductions required pursuant to Section 10608.24, if the urban
20 retail water supplier has submitted to the department for approval
21 documentation demonstrating that its entire service area qualifies
22 as a disadvantaged community.

23 (f) The department shall not deny eligibility to an urban retail
24 water supplier or agricultural water supplier in compliance with
25 the requirements of this part and Part 2.8 (commencing with
26 Section 10800), that is participating in a multiagency water project,
27 or an integrated regional water management plan, developed
28 pursuant to Section 75026 of the Public Resources Code, solely
29 on the basis that one or more of the agencies participating in the
30 project or plan is not implementing all of the requirements of this
31 part or Part 2.8 (commencing with Section 10800).

32 10608.60. (a) It is the intent of the Legislature that funds made
33 available by Section 75026 of the Public Resources Code should
34 be expended, consistent with Division 43 (commencing with
35 Section 75001) of the Public Resources Code and upon
36 appropriation by the Legislature, for grants to implement this part.
37 In the allocation of funding, it is the intent of the Legislature that
38 the department give consideration to disadvantaged communities
39 to assist in implementing the requirements of this part.

1 (b) It is the intent of the Legislature that funds made available
 2 by Section 75041 of the Public Resources Code, should be
 3 expended, consistent with Division 43 (commencing with Section
 4 75001) of the Public Resources Code and upon appropriation by
 5 the Legislature, for direct expenditures to implement this part.

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CHAPTER 8. QUANTIFYING AGRICULTURAL WATER USE
 EFFICIENCY

10 10608.64. The department, in consultation with the Agricultural
 11 Water Management Council, academic experts, and other
 12 stakeholders, shall develop a methodology for quantifying the
 13 efficiency of agricultural water use. Alternatives to be assessed
 14 shall include, but not be limited to, determination of efficiency
 15 levels based on crop type or irrigation system distribution
 16 uniformity. On or before December 31, 2011, the department shall
 17 report to the Legislature on a proposed methodology and a plan
 18 for implementation. The plan shall include the estimated
 19 implementation costs and the types of data needed to support the
 20 methodology. Nothing in this section authorizes the department
 21 to implement a methodology established pursuant to this section.

22 SEC. 69. Section 10631.5 of the Water Code is amended to
 23 read:

24 10631.5. (a) (1) Beginning January 1, 2009, the terms of, and
 25 eligibility for, a water management grant or loan made to an urban
 26 water supplier and awarded or administered by the department,
 27 state board, or California Bay-Delta Authority or its successor
 28 agency shall be conditioned on the implementation of the water
 29 demand management measures described in Section 10631, as
 30 determined by the department pursuant to subdivision (b).

31 (2) For the purposes of this section, water management grants
 32 and loans include funding for programs and projects for surface
 33 water or groundwater storage, recycling, desalination, water
 34 conservation, water supply reliability, and water supply
 35 augmentation. This section does not apply to water management
 36 projects funded by the federal American Recovery and
 37 Reinvestment Act of 2009 (Public Law 111-5).

38 (3) Notwithstanding paragraph (1), the department shall
 39 determine that an urban water supplier is eligible for a water
 40 management grant or loan even though the supplier is not

1 implementing all of the water demand management measures
2 described in Section 10631, if the urban water supplier has
3 submitted to the department for approval a schedule, financing
4 plan, and budget, to be included in the grant or loan agreement,
5 for implementation of the water demand management measures.
6 The supplier may request grant or loan funds to implement the
7 water demand management measures to the extent the request is
8 consistent with the eligibility requirements applicable to the water
9 management funds.

10 (4) (A) Notwithstanding paragraph (1), the department shall
11 determine that an urban water supplier is eligible for a water
12 management grant or loan even though the supplier is not
13 implementing all of the water demand management measures
14 described in Section 10631, if an urban water supplier submits to
15 the department for approval documentation demonstrating that a
16 water demand management measure is not locally cost effective.
17 If the department determines that the documentation submitted by
18 the urban water supplier fails to demonstrate that a water demand
19 management measure is not locally cost effective, the department
20 shall notify the urban water supplier and the agency administering
21 the grant or loan program within 120 days that the documentation
22 does not satisfy the requirements for an exemption, and include
23 in that notification a detailed statement to support the
24 determination.

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

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

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

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

4 (2) (A) For the purposes of this section, the department shall
5 determine whether an urban water supplier is implementing all of
6 the water demand management measures described in Section
7 10631 based on either, or a combination, of the following:

8 (i) Compliance on an individual basis.

9 (ii) Compliance on a regional basis. Regional compliance shall
10 require participation in a regional conservation program consisting
11 of two or more urban water suppliers that achieves the level of
12 conservation or water efficiency savings equivalent to the amount
13 of conservation or savings achieved if each of the participating
14 urban water suppliers implemented the water demand management
15 measures. The urban water supplier administering the regional
16 program shall provide participating urban water suppliers and the
17 department with data to demonstrate that the regional program is
18 consistent with this clause. The department shall review the data
19 to determine whether the urban water suppliers in the regional
20 program are meeting the eligibility requirements.

21 (B) The department may require additional information for any
22 determination pursuant to this section.

23 (3) The department shall not deny eligibility to an urban water
24 supplier in compliance with the requirements of this section that
25 is participating in a multiagency water project, or an integrated
26 regional water management plan, developed pursuant to Section
27 75026 of the Public Resources Code, solely on the basis that one
28 or more of the agencies participating in the project or plan is not
29 implementing all of the water demand management measures
30 described in Section 10631.

31 (c) In establishing guidelines pursuant to the specific funding
32 authorization for any water management grant or loan program
33 subject to this section, the agency administering the grant or loan
34 program shall include in the guidelines the eligibility requirements
35 developed by the department pursuant to subdivision (b).

36 (d) Upon receipt of a water management grant or loan
37 application by an agency administering a grant and loan program
38 subject to this section, the agency shall request an eligibility
39 determination from the department with respect to the requirements

1 of this section. The department shall respond to the request within
2 60 days of the request.

3 (e) The urban water supplier may submit to the department
4 copies of its annual reports and other relevant documents to assist
5 the department in determining whether the urban water supplier
6 is implementing or scheduling the implementation of water demand
7 management activities. In addition, for urban water suppliers that
8 are signatories to the Memorandum of Understanding Regarding
9 Urban Water Conservation in California and submit biennial reports
10 to the California Urban Water Conservation Council in accordance
11 with the memorandum, the department may use these reports to
12 assist in tracking the implementation of water demand management
13 measures.

14 (f) This section shall remain in effect only until July 1, 2016,
15 and as of that date is repealed, unless a later enacted statute, that
16 is enacted before July 1, 2016, deletes or extends that date.

17 SEC. 70. Part 2.8 (commencing with Section 10800) of
18 Division 6 of the Water Code is repealed.

19 SEC. 71. Part 2.8 (commencing with Section 10800) is added
20 to Division 6 of the Water Code, to read:

21

22 PART 2.8. AGRICULTURAL WATER MANAGEMENT
23 PLANNING

24

25 CHAPTER 1. GENERAL DECLARATIONS AND POLICY

26

27 10800. This part shall be known and may be cited as the
28 Agricultural Water Management Planning Act.

29 10801. The Legislature finds and declares all of the following:

30 (a) The waters of the state are a limited and renewable resource.

31 (b) The California Constitution requires that water in the state
32 be used in a reasonable and beneficial manner.

33 (c) Urban water districts are required to adopt water management
34 plans.

35 (d) The conservation of agricultural water supplies is of great
36 statewide concern.

37 (e) There is a great amount of reuse of delivered water, both
38 inside and outside the water service areas.

39 (f) Significant noncrop beneficial uses are associated with
40 agricultural water use, including streamflows and wildlife habitat.

1 (g) Significant opportunities exist in some areas, through
2 improved irrigation water management, to conserve water or to
3 reduce the quantity of highly saline or toxic drainage water.

4 (h) Changes in water management practices should be carefully
5 planned and implemented to minimize adverse effects on other
6 beneficial uses currently being served.

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

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

13 10802. The Legislature finds and declares that all of the
14 following are the policies of the state:

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

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

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

21

22 CHAPTER 2. DEFINITIONS

23

24 10810. Unless the context otherwise requires, the definitions
25 set forth in this chapter govern the construction of this part.

26 10811. “Agricultural water management plan” or “plan” means
27 an agricultural water management plan prepared pursuant to this
28 part.

29 10812. “Agricultural water supplier” has the same meaning as
30 defined in Section 10608.12.

31 10813. “Customer” means a purchaser of water from a water
32 supplier who uses water for agricultural purposes.

33 10814. “Person” means any individual, firm, association,
34 organization, partnership, business, trust, corporation, company,
35 public agency, or any agency of that entity.

36 10815. “Public agency” means any city, county, city and
37 county, special district, or other public entity.

38 10816. “Urban water supplier” has the same meaning as set
39 forth in Section 10617.

1 10817. “Water conservation” means the efficient management
2 of water resources for beneficial uses, preventing waste, or
3 accomplishing additional benefits with the same amount of water.

4
5 CHAPTER 3. AGRICULTURAL WATER MANAGEMENT PLANS

6
7 Article 1. General Provisions

8
9 10820. (a) An agricultural water supplier shall prepare and
10 adopt an agricultural water management plan in the manner set
11 forth in this chapter on or before December 31, 2012, and shall
12 update that plan on December 31, 2015, and on or before December
13 31 every five years thereafter.

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

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

22 10821. (a) An agricultural water supplier required to prepare
23 a plan pursuant to this part shall notify each city or county within
24 which the supplier provides water supplies that the agricultural
25 water supplier will be preparing the plan or reviewing the plan and
26 considering amendments or changes to the plan. The agricultural
27 water supplier may consult with, and obtain comments from, each
28 city or county that receives notice pursuant to this subdivision.

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

32
33 Article 2. Contents of Plans

34
35 10825. (a) It is the intent of the Legislature in enacting this
36 part to allow levels of water management planning commensurate
37 with the numbers of customers served and the volume of water
38 supplied.

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

4 10826. An agricultural water management plan shall be adopted
5 in accordance with this chapter. The plan shall do all of the
6 following:

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

9 (1) Size of the service area.

10 (2) Location of the service area and its water management
11 facilities.

12 (3) Terrain and soils.

13 (4) Climate.

14 (5) Operating rules and regulations.

15 (6) Water delivery measurements or calculations.

16 (7) Water rate schedules and billing.

17 (8) Water shortage allocation policies.

18 (b) Describe the quantity and quality of water resources of the
19 agricultural water supplier, including all of the following:

20 (1) Surface water supply.

21 (2) Groundwater supply.

22 (3) Other water supplies.

23 (4) Source water quality monitoring practices.

24 (5) Water uses within the agricultural water supplier's service
25 area, including all of the following:

26 (A) Agricultural.

27 (B) Environmental.

28 (C) Recreational.

29 (D) Municipal and industrial.

30 (E) Groundwater recharge.

31 (F) Transfers and exchanges.

32 (G) Other water uses.

33 (6) Drainage from the water supplier's service area.

34 (7) Water accounting, including all of the following:

35 (A) Quantifying the water supplier's water supplies.

36 (B) Tabulating water uses.

37 (C) Overall water budget.

38 (8) Water supply reliability.

39 (c) Include an analysis, based on available information, of the
40 effect of climate change on future water supplies.

1 (d) Describe previous water management activities.

2 (e) Include in the plan the water use efficiency information
3 required pursuant to Section 10608.48.

4 10827. Agricultural water suppliers that are members of the
5 Agricultural Water Management Council, and that submit water
6 management plans to that council in accordance with the
7 “Memorandum of Understanding Regarding Efficient Water
8 Management Practices By Agricultural Water Suppliers In
9 California,” dated January 1, 1999, may submit the water
10 management plans identifying water demand management
11 measures currently being implemented, or scheduled for
12 implementation, to satisfy the requirements of Section 10826.

13 10828. (a) Agricultural water suppliers that are required to
14 submit water conservation plans to the United States Bureau of
15 Reclamation pursuant to either the Central Valley Project
16 Improvement Act (Public Law 102-575) or the Reclamation
17 Reform Act of 1982, or both, may submit those water conservation
18 plans to satisfy the requirements of Section 10826, if both of the
19 following apply:

20 (1) The agricultural water supplier has adopted and submitted
21 the water conservation plan to the United States Bureau of
22 Reclamation within the previous four years.

23 (2) The United States Bureau of Reclamation has accepted the
24 water conservation plan as adequate.

25 (b) This part does not require agricultural water suppliers that
26 are required to submit water conservation plans to the United States
27 Bureau of Reclamation pursuant to either the Central Valley Project
28 Improvement Act (Public Law 102-575) or the Reclamation
29 Reform Act of 1982, or both, to prepare and adopt water
30 conservation plans according to a schedule that is different from
31 that required by the United States Bureau of Reclamation.

32 10829. An agricultural water supplier may satisfy the
33 requirements of this part by adopting an urban water management
34 plan pursuant to Part 2.6 (commencing with Section 10610) or by
35 participation in area wide, regional, watershed, or basinwide water
36 management planning if those plans meet or exceed the
37 requirements of this part.

Article 3. Adoption and Implementation of Plans

10840. Every agricultural water supplier shall prepare its plan pursuant to Article 2 (commencing with Section 10825).

10841. Prior to adopting a plan, the agricultural water supplier shall make the proposed plan available for public inspection, and shall hold a public hearing on the plan. Prior to the hearing, notice of the time and place of hearing shall be published within the jurisdiction of the publicly owned agricultural water supplier pursuant to Section 6066 of the Government Code. A privately owned agricultural water supplier shall provide an equivalent notice within its service area and shall provide a reasonably equivalent opportunity that would otherwise be afforded through a public hearing process for interested parties to provide input on the plan. After the hearing, the plan shall be adopted as prepared or as modified during or after the hearing.

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

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

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

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

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

4 10844. (a) Not later than 30 days after the date of adopting its
5 plan, the agricultural water supplier shall make the plan available
6 for public review on the agricultural water supplier's Internet Web
7 site.

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

13 10845. (a) The department shall prepare and submit to the
14 Legislature, on or before December 31, 2013, and thereafter in the
15 years ending in six and years ending in one, a report summarizing
16 the status of the plans adopted pursuant to this part.

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

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

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

31

32 CHAPTER 4. MISCELLANEOUS PROVISIONS

33

34 10850. (a) Any action or proceeding to attack, review, set
35 aside, void, or annul the acts or decisions of an agricultural water
36 supplier on the grounds of noncompliance with this part shall be
37 commenced as follows:

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

1 (2) Any action or proceeding alleging that a plan, or action taken
 2 pursuant to the plan, does not comply with this part shall be
 3 commenced within 120 days after submitting the plan or
 4 amendments to the plan to entities in accordance with Section
 5 10844 or the taking of that action.

6 (b) In an action or proceeding to attack, review, set aside, void,
 7 or annul a plan, or an action taken pursuant to the plan by an
 8 agricultural water supplier, on the grounds of noncompliance with
 9 this part, the inquiry shall extend only to whether there was a
 10 prejudicial abuse of discretion. Abuse of discretion is established
 11 if the agricultural water supplier has not proceeded in a manner
 12 required by law, or if the action by the agricultural water supplier
 13 is not supported by substantial evidence.

14 10851. The California Environmental Quality Act (Division
 15 13 (commencing with Section 21000) of the Public Resources
 16 Code) does not apply to the preparation and adoption of plans
 17 pursuant to this part. This part does not exempt projects for
 18 implementation of the plan or for expanded or additional water
 19 supplies from the California Environmental Quality Act.

20 10852. An agricultural water supplier is not eligible for a water
 21 grant or loan awarded or administered by the state unless the
 22 supplier complies with this part.

23 10853. No agricultural water supplier that provides water to
 24 less than 25,000 irrigated acres, excluding recycled water, shall
 25 be required to implement the requirements of this part or Part 2.55
 26 (commencing with Section 10608) unless sufficient funding has
 27 specifically been provided to that water supplier for these purposes.

28 SEC. 72. Part 2.11 (commencing with Section 10920) is added
 29 to Division 6 of the Water Code, to read:

30
 31 PART 2.11. GROUNDWATER MONITORING

32
 33 CHAPTER 1. GENERAL PROVISIONS

34
 35 10920. (a) It is the intent of the Legislature that on or before
 36 January 1, 2012, groundwater elevations in all groundwater basins
 37 and subbasins be regularly and systematically monitored locally
 38 and that the resulting groundwater information be made readily
 39 and widely available.

1 (b) It is further the intent of the Legislature that the department
2 continue to maintain its current network of monitoring wells,
3 including groundwater elevation and groundwater quality
4 monitoring wells, and that the department continue to coordinate
5 monitoring with local entities.

6 10921. This part does not require the monitoring of
7 groundwater elevations in an area that is not within a basin or
8 subbasin.

9 10922. This part does not expand or otherwise affect the powers
10 or duties of the department relating to groundwater beyond those
11 expressly granted by this part.

12
13 CHAPTER 2. DEFINITIONS
14

15 10925. Unless the context otherwise requires, the definitions
16 set forth in this section govern the construction of this part.

17 (a) “Basin” or “subbasin” means a groundwater basin or
18 subbasin identified and defined in the department’s Bulletin No.
19 118.

20 (b) “Bulletin No. 118” means the department’s report entitled
21 “California’s Groundwater: Bulletin 118” updated in 2003, or as
22 it may be subsequently updated or revised in accordance with
23 Section 12924.

24 (c) “Monitoring entity” means a party conducting or
25 coordinating the monitoring of groundwater elevations pursuant
26 to this part.

27 (d) “Monitoring functions” and “groundwater monitoring
28 functions” means the monitoring of groundwater elevations, the
29 reporting of those elevations to the department, and other related
30 actions required by this part.

31 (e) “Monitoring groundwater elevations” means monitoring
32 groundwater elevations, coordinating the monitoring of
33 groundwater elevations, or both.

34 (f) “Voluntary cooperative groundwater monitoring association”
35 means an association formed for the purposes of monitoring
36 groundwater elevations pursuant to Section 10935.

CHAPTER 3. GROUNDWATER MONITORING PROGRAM

1
2
3 10927. Any of the following entities may assume responsibility
4 for monitoring and reporting groundwater elevations in all or a
5 part of a basin or subbasin in accordance with this part:
6 (a) A watermaster or water management engineer appointed by
7 a court or pursuant to statute to administer a final judgment
8 determining rights to groundwater.
9 (b) (1) A groundwater management agency with statutory
10 authority to manage groundwater pursuant to its principal act that
11 is monitoring groundwater elevations in all or a part of a
12 groundwater basin or subbasin on or before January 1, 2010.
13 (2) A water replenishment district established pursuant to
14 Division 18 (commencing with Section 60000). This part does not
15 expand or otherwise affect the authority of a water replenishment
16 district relating to monitoring groundwater elevations.
17 (c) A local agency that is managing all or part of a groundwater
18 basin or subbasin pursuant to Part 2.75 (commencing with Section
19 10750) and that was monitoring groundwater elevations in all or
20 a part of a groundwater basin or subbasin on or before January 1,
21 2010, or a local agency or county that is managing all or part of a
22 groundwater basin or subbasin pursuant to any other legally
23 enforceable groundwater management plan with provisions that
24 are substantively similar to those described in that part and that
25 was monitoring groundwater elevations in all or a part of a
26 groundwater basin or subbasin on or before January 1, 2010.
27 (d) A local agency that is managing all or part of a groundwater
28 basin or subbasin pursuant to an integrated regional water
29 management plan prepared pursuant to Part 2.2 (commencing with
30 Section 10530) that includes a groundwater management
31 component that complies with the requirements of Section 10753.7.
32 (e) A county that is not managing all or a part of a groundwater
33 basin or subbasin pursuant to a legally enforceable groundwater
34 management plan with provisions that are substantively similar to
35 those described in Part 2.75 (commencing with Section 10750).
36 (f) A voluntary cooperative groundwater monitoring association
37 formed pursuant to Section 10935.
38 10928. (a) Any entity described in subdivision (a) or (b) of
39 Section 10927 that seeks to assume groundwater monitoring
40 functions in accordance with this part shall notify the department,

1 in writing, on or before January 1, 2011. The notification shall
2 include all of the following information:

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

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

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

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

12 (b) Any entity described in subdivision (c), (d), (e), or (f) of
13 Section 10927 that seeks to assume groundwater monitoring
14 functions in accordance with this part shall notify the department,
15 in writing, by January 1, 2011. The information provided in the
16 notification shall include all of the following:

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

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

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

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

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

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

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

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

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

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

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

9 (A) Verify that each notification is complete.

10 (B) Assess the qualifications of the notifying party.

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

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

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

26 10930. Upon completion of each review pursuant to Section
27 10929, the department shall do both of the following if it
28 determines that a party will perform monitoring functions under
29 this part:

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

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

36 10931. (a) The department shall work cooperatively with each
37 monitoring entity to determine the manner in which groundwater
38 elevation information should be reported to the department pursuant
39 to this part. In determining what information should be reported
40 to the department, the department shall defer to existing monitoring

1 programs if those programs result in information that demonstrates
2 seasonal and long-term trends in groundwater elevations. The
3 department shall collaborate with the State Department of Public
4 Health to ensure that the information reported to the department
5 will not result in the inappropriate disclosure of the physical
6 address or geographical location of drinking water sources, storage
7 facilities, pumping operational data, or treatment facilities.

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

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

13 10932. Monitoring entities shall commence monitoring and
14 reporting groundwater elevations pursuant to this part on or before
15 January 1, 2012.

16 10933. (a) On or before January 1, 2012, the department shall
17 commence to identify the extent of monitoring of groundwater
18 elevations that is being undertaken within each basin and subbasin.

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

23 (1) The population overlying the basin or subbasin.

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

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

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

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

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

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

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

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

1 (1) Attempt to contact all well owners within the area not being
2 monitored.
3 (2) Determine if there is an interest in establishing any of the
4 following:
5 (A) A groundwater management plan pursuant to Part 2.75
6 (commencing with Section 10750).
7 (B) An integrated regional water management plan pursuant to
8 Part 2.2 (commencing with Section 10530) that includes a
9 groundwater management component that complies with the
10 requirements of Section 10753.7.
11 (C) A voluntary groundwater monitoring association pursuant
12 to Section 10935.
13 (d) If the department determines that there is sufficient interest
14 in establishing a plan or association described in paragraph (2) of
15 subdivision (c), or if the county agrees to perform the groundwater
16 monitoring functions in accordance with this part, the department
17 shall work cooperatively with the interested parties to comply with
18 the requirements of this part within two years.
19 (e) (1) If the department determines, with regard to a basin or
20 subbasin, that there is insufficient interest in establishing a plan
21 or association described in paragraph (2) of subdivision (c), the
22 department shall notify the county or counties within which the
23 basin or subbasin is located, in whole or in part, of that
24 determination.
25 (2) Any county notified by the department pursuant to paragraph
26 (1) that there is insufficient interest in establishing a plan or
27 association described in paragraph (2) of subdivision (c) shall,
28 within two years of notification by the department, do one of the
29 following:
30 (A) Form or facilitate the formation of a plan or association
31 described in paragraph (2) of subdivision (c) to perform the
32 groundwater monitoring functions in accordance with this part.
33 (B) Perform the groundwater monitoring functions in accordance
34 with this part.
35 10933.5. If a county is notified pursuant to subdivision (e) of
36 Section 10933 and fails to undertake one of the two actions
37 described in paragraph (2) of subdivision (e) of Section 10933,
38 the county and the entities described in subdivisions (a) to (d),
39 inclusive, of Section 10927 shall not be eligible for a water grant

1 or loan awarded or administered by the state until either of the
2 following occurs:

3 (a) The county complies with paragraph (2) of subdivision (e)
4 of Section 10933.

5 (b) One of the entities described in Section 10927, with regard
6 to that basin or subbasin, agrees to perform groundwater monitoring
7 functions in accordance with this part.

8 10934. This part does not provide any new or additional
9 authority to any entity described in Section 10927 to do either of
10 the following:

11 (a) To enter private property without the consent of the property
12 owner.

13 (b) To require a private property owner to submit groundwater
14 monitoring information to the entity.

15 10935. (a) A voluntary cooperative groundwater monitoring
16 association may be formed for the purposes of monitoring
17 groundwater elevations in accordance with this part. The
18 association may be established by contract, a joint powers
19 agreement, a memorandum of agreement, or other form of
20 agreement deemed acceptable by the department.

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

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

26 (1) The names of the participants.

27 (2) The boundaries of the area covered by the agreement.

28 (3) The name or names of the parties responsible for meeting
29 the requirements of this part.

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

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

33 10936. Costs incurred by the department pursuant to this
34 chapter may be funded from unallocated bond revenues pursuant
35 to paragraph (12) of subdivision (a) of Section 75027 of the Public
36 Resources Code, to the extent those funds are available for those
37 purposes.

38 SEC. 73. Section 12924 of the Water Code is repealed.

39 SEC. 74. Section 12924 is added to the Water Code, to read:

1 12924. (a) The department, in conjunction with other public
 2 agencies, shall conduct an investigation of the state’s groundwater
 3 basins. The department shall identify the state’s groundwater basins
 4 on the basis of geological and hydrological conditions and
 5 consideration of political boundary lines whenever practical. The
 6 department shall also investigate existing general patterns of
 7 groundwater pumping and groundwater recharge within those
 8 basins to the extent necessary to identify basins that are subject to
 9 critical conditions of overdraft.

10 (b) The department shall report its findings to the Governor and
 11 the Legislature not later than January 1, 2012, and thereafter in
 12 years ending in 5 or 0.

13 SEC. 75. Division 26.4 (commencing with Section 79400) of
 14 the Water Code is repealed.

15 SEC. 76. Division 35 (commencing with Section 85000) is
 16 added to the Water Code, to read:

17
 18 DIVISION 35. SACRAMENTO-SAN JOAQUIN DELTA
 19 REFORM ACT OF 2009

20
 21 PART 1. GENERAL PROVISIONS

22
 23 CHAPTER 1. SHORT TITLE AND LEGISLATIVE FINDINGS

24
 25 85000. This division shall be known, and may be cited, as the
 26 Sacramento-San Joaquin Delta Reform Act of 2009.

27 85001. The Legislature finds and declares all of the following:

28 (a) The Sacramento-San Joaquin Delta watershed and
 29 California’s water infrastructure are in crisis and existing Delta
 30 policies are not sustainable. Resolving the crisis requires
 31 fundamental reorganization of the state’s management of Delta
 32 watershed resources.

33 (b) In response to the Delta crisis, the Legislature and the
 34 Governor required development of a new long-term strategic vision
 35 for managing the Delta. The Governor appointed a Blue Ribbon
 36 Task Force to recommend a new “Delta Vision Strategic Plan” to
 37 his cabinet committee, which, in turn, made recommendations for
 38 a Delta Vision to the Governor and the Legislature on January 3,
 39 2009.

1 (c) By enacting this division, it is the intent of the Legislature
2 to provide for the sustainable management of the Sacramento-San
3 Joaquin Delta ecosystem, to provide for a more reliable water
4 supply for the state, to protect and enhance the quality of water
5 supply from the Delta, and to establish a governance structure that
6 will direct efforts across state agencies to develop a legally
7 enforceable Delta Plan.

8 85002. The Legislature finds and declares that the
9 Sacramento-San Joaquin Delta, referred to as “the Delta” in this
10 division, is a critically important natural resource for California
11 and the nation. It serves Californians concurrently as both the hub
12 of the California water system and the most valuable estuary and
13 wetland ecosystem on the west coast of North and South America.

14 85003. The Legislature finds and declares all of the following:

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

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

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

39 85004. The Legislature finds and declares all of the following:

1 (a) The economies of major regions of the state depend on the
 2 ability to use water within the Delta watershed or to import water
 3 from the Delta watershed. More than two-thirds of the residents
 4 of the state and more than two million acres of highly productive
 5 farm land receive water exported from the Delta watershed.

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

11
 12 CHAPTER 2. DELTA POLICY
 13

14 85020. The policy of the State of California is to achieve the
 15 following objectives that the Legislature declares are inherent in
 16 the coequal goals for management of the Delta:

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

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

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

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

25 (e) Improve water quality to protect human health and the
 26 environment consistent with achieving water quality objectives in
 27 the Delta.

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

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

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

36 85021. The policy of the State of California is to reduce reliance
 37 on the Delta in meeting California's future water supply needs
 38 through a statewide strategy of investing in improved regional
 39 supplies, conservation, and water use efficiency. Each region that
 40 depends on water from the Delta watershed shall improve its

1 regional self-reliance for water through investment in water use
2 efficiency, water recycling, advanced water technologies, local
3 and regional water supply projects, and improved regional
4 coordination of local and regional water supply efforts.

5 85022. (a) It is the intent of the Legislature that state and local
6 land use actions identified as “covered actions” pursuant to Section
7 85058.5 be consistent with the Delta Plan. This section’s findings,
8 policies, and goals apply to Delta land use planning and
9 development.

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

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

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

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

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

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

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

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

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

- 1 (3) Maximize public access to Delta resources and maximize
- 2 public recreational opportunities in the Delta consistent with sound
- 3 resources conservation principles and constitutionally protected
- 4 rights of private property owners.
- 5 (4) Encourage state and local initiatives and cooperation in
- 6 preparing procedures to implement coordinated planning and
- 7 development for mutually beneficial uses, including educational
- 8 uses, in the Delta.
- 9 (5) Develop new or improved aquatic and terrestrial habitat and
- 10 protect existing habitats to advance the goal of restoring and
- 11 enhancing the Delta ecosystem.
- 12 (6) Improve water quality to protect human health and the
- 13 environment consistent with achieving water quality objectives in
- 14 the Delta.
- 15 85023. The longstanding constitutional principle of reasonable
- 16 use and the public trust doctrine shall be the foundation of state
- 17 water management policy and are particularly important and
- 18 applicable to the Delta.

19
20
21

CHAPTER 3. MISCELLANEOUS PROVISIONS

- 22 85031. (a) This division does not diminish, impair, or
- 23 otherwise affect in any manner whatsoever any area of origin,
- 24 watershed of origin, county of origin, or any other water rights
- 25 protections, including, but not limited to, rights to water
- 26 appropriated prior to December 19, 1914, provided under the law.
- 27 This division does not limit or otherwise affect the application of
- 28 Article 1.7 (commencing with Section 1215) of Chapter 1 of Part
- 29 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461,
- 30 11462, and 11463, and Sections 12200 to 12220, inclusive.
- 31 (b) Nothing in this division supersedes, limits, or otherwise
- 32 modifies the applicability of Chapter 10 (commencing with Section
- 33 1700) of Part 2 of Division 2, including petitions related to any
- 34 new conveyance constructed or operated in accordance with
- 35 Chapter 2 (commencing with Section 85320) of Part 4.
- 36 (c) Unless otherwise expressly provided, nothing in this division
- 37 supersedes, reduces, or otherwise affects existing legal protections,
- 38 both procedural and substantive, relating to the board’s regulation
- 39 of diversion and use of water, including, but not limited to, the
- 40 protection provided to municipal interests by Sections 106 and

1 106.5, and changes in water rights. Nothing in this division expands
2 or otherwise alters the board's existing authority to regulate the
3 diversion and use of water or the courts' existing concurrent
4 jurisdiction over California water rights.

5 85032. This division does not affect any of the following:

6 (a) The Natural Community Conservation Planning Act (Chapter
7 10 (commencing with Section 2800) of Division 3 of the Fish and
8 Game Code).

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

12 (c) The Fish and Game Code.

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

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

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

19 (g) Section 1702.

20 (h) The application of the public trust doctrine.

21 (i) Any water right.

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

24 85034. (a) (1) The council shall administer all contracts,
25 grants, easements, and agreements made or entered into by the
26 California Bay-Delta Authority under Division 26.4 (commencing
27 with Section 79400), as that division read on December 31, 2009.

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

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

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

38 (c) The council shall have possession and control of all records,
39 papers, equipment, supplies, contracts, leases, agreements, and
40 other property, real or personal, connected with the administration

1 of Division 26.4 (commencing with Section 79400), as that division
2 read on December 31, 2009, or held for the benefit or use of the
3 California Bay-Delta Authority.

4 (d) The council shall assume from the California Bay-Delta
5 Authority all responsibility to manage, in accordance with Chapter
6 5 (commencing with Section 85280) of Part 3, the science program
7 element that was required to be undertaken by Division 26.4
8 (commencing with Section 79400).

9 (e) Consistent with the responsibilities and duties assumed by
10 the council pursuant to this section, all staff, resources, and funding
11 within the Natural Resources Agency and the Department of
12 Forestry and Fire Protection for the support of the CALFED
13 Bay-Delta Program are hereby transferred to, and may be expended
14 for the purposes of, the council. The executive officer of the council
15 shall confer with the Director of Fish and Game, the director of
16 the department, and the executive director of the board regarding
17 possible reallocation of the staff and resources. The status, position,
18 and rights of any officer or employee shall not be affected by this
19 transfer and all officers and employees shall be retained pursuant
20 to the State Civil Service Act (Part 2 (commencing with Section
21 18500) of Division 5 of Title 2 of the Government Code).

22
23 CHAPTER 4. DEFINITIONS
24

25 85050. Unless the context otherwise requires, the definitions
26 set forth in this chapter govern the construction of this division.

27 85051. “Acquisition” means the acquisition of a fee interest
28 or any other interest, including easements, leases, and development
29 rights.

30 85052. “Adaptive management” means a framework and
31 flexible decisionmaking process for ongoing knowledge
32 acquisition, monitoring, and evaluation leading to continuous
33 improvement in management planning and implementation of a
34 project to achieve specified objectives.

35 85053. “Bay Delta Conservation Plan” or “BDCP” means a
36 multispecies conservation plan.

37 85054. “Coequal goals” means the two goals of providing a
38 more reliable water supply for California and protecting, restoring,
39 and enhancing the Delta ecosystem. The coequal goals shall be
40 achieved in a manner that protects and enhances the unique cultural,

1 recreational, natural resource, and agricultural values of the Delta
2 as an evolving place.

3 85055. “Commission” means the Delta Protection Commission
4 established in Division 19.5 (commencing with Section 29700) of
5 the Public Resources Code.

6 85056. “Conservancy” means the Sacramento-San Joaquin
7 Delta Conservancy established in Section 32320 of the Public
8 Resources Code.

9 85057. “Council” means the Delta Stewardship Council
10 established in Section 85200.

11 85057.5. (a) “Covered action” means a plan, program, project,
12 or activity that meets all of the following conditions:

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

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

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

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

22 (b) “Covered action” does not include any of the following:

23 (1) A regulatory action of a state agency.

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

26 (3) Regional transportation plans prepared pursuant to Section
27 65080 of the Government Code.

28 (4) Any plan, program, project, or activity within the secondary
29 zone of the Delta that the applicable metropolitan planning
30 organization under Section 65080 of the Government Code has
31 determined is consistent with either a sustainable communities
32 strategy or an alternative planning strategy that the State Air
33 Resources Board has determined would, if implemented, achieve
34 the greenhouse gas emission reduction targets established by that
35 board pursuant to subparagraph (A) of paragraph (2) of subdivision
36 (b) of Section 65080 of the Government Code. For purposes of
37 this paragraph, “consistent with” means consistent with the use
38 designation, density, building intensity, transportation plan, and
39 applicable policies specified for the area in the sustainable
40 communities strategy or the alternative planning strategy, as

1 applicable, and any infrastructure necessary to support the plan,
2 program, project, or activity.

3 (5) Routine maintenance and operation of any facility located,
4 in whole or in part, in the Delta, that is owned or operated by a
5 local public agency.

6 (6) Any plan, program, project, or activity that occurs, in whole
7 or in part, in the Delta, if both of the following conditions are met:

8 (A) The plan, program, project, or activity is undertaken by a
9 local public agency that is located, in whole or in part, in the Delta.

10 (B) Either a notice of determination is filed, pursuant to Section
11 21152 of the Public Resources Code, for the plan, program, project,
12 or activity by, or the plan, program, project, or activity is fully
13 permitted by, September 30, 2009.

14 85058. “Delta” means the Sacramento-San Joaquin Delta as
15 defined in Section 12220 and the Suisun Marsh, as defined in
16 Section 29101 of the Public Resources Code.

17 85059. “Delta Plan” means the comprehensive, long-term
18 management plan for the Delta as adopted by the council in
19 accordance with this division.

20 85060. “Delta watershed” means the Sacramento River
21 Hydrologic Region and the San Joaquin River Hydrologic Region
22 as described in the department’s Bulletin No. 160-05.

23 85064. “Public water agency” means a public entity, as defined
24 in Section 514, that provides water service, as defined in Section
25 515.

26 85066. “Restoration” means the application of ecological
27 principles to restore a degraded or fragmented ecosystem and return
28 it to a condition in which its biological and structural components
29 achieve a close approximation of its natural potential, taking into
30 consideration the physical changes that have occurred in the past
31 and the future impact of climate change and sea level rise.

32 85067. “Strategic Plan” means both the “Delta Vision Strategic
33 Plan” issued by the Delta Vision Blue Ribbon Task Force on
34 October 17, 2008, and the “Delta Vision Implementation Report”
35 adopted by the Delta Vision Committee and dated December 31,
36 2008.

PART 2. EARLY ACTIONS

85080. The council shall appoint a Delta Independent Science Board in accordance with Section 85280.

85082. The council shall develop and implement a strategy to appropriately engage participation of the federal agencies with responsibilities in the Delta. This strategy shall include engaging these federal agencies to develop the Delta Plan consistent with the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and Section 8 of the federal Reclamation Act of 1902.

85084. The council shall develop an interim plan that includes recommendations for early actions, projects, and programs.

85084.5. The Department of Fish and Game, in consultation with the United States Fish and Wildlife Service and the National Marine Fisheries Service and based on the best available science, shall develop and recommend to the board Delta flow criteria and quantifiable biological objectives for aquatic and terrestrial species of concern dependent on the Delta. The recommendations shall be developed no later than 12 months after the date of enactment of this division.

85085. The department shall do all of the following:

(a) Coordinate with the Department of Fish and Game, the board, the California regional water quality control boards, and the State Lands Commission efforts to cooperate with the United States Bureau of Reclamation to construct and implement the Two-Gates Fish Protection Demonstration Project by December 1, 2010.

(b) Evaluate the effectiveness of the Three Mile Slough Barrier project.

(c) Expeditiously move ahead with other near term actions as identified in the Strategic Plan.

(d) Assist in implementing early action ecosystem restoration projects, including, but not limited to, Dutch Slough tidal marsh restoration and Meins Island tidal marsh restoration.

85086. (a) The board shall establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010.

(b) It is the intent of the Legislature to establish an accelerated process to determine instream flow needs of the Delta for the

1 purposes of facilitating the planning decisions that are required to
2 achieve the objectives of the Delta Plan.

3 (c) (1) For the purpose of informing planning decisions for the
4 Delta Plan and the Bay Delta Conservation Plan, the board shall,
5 pursuant to its public trust obligations, develop new flow criteria
6 for the Delta ecosystem necessary to protect public trust resources.
7 In carrying out this section, the board shall review existing water
8 quality objectives and use the best available scientific information.
9 The flow criteria for the Delta ecosystem shall include the volume,
10 quality, and timing of water necessary for the Delta ecosystem
11 under different conditions. The flow criteria shall be developed in
12 a public process by the board within nine months of the enactment
13 of this division. The public process shall be in the form of an
14 informational proceeding conducted pursuant to Article 3
15 (commencing with Section 649) of Chapter 1.5 of Division 3 of
16 Title 23 of the California Code of Regulations, and shall provide
17 an opportunity for all interested persons to participate. The flow
18 criteria shall not be considered predecisional with regard to any
19 subsequent board consideration of a permit, including any permit
20 in connection with a final BDCP.

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

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

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

1 (e) The board shall submit its flow criteria determinations
2 pursuant to this section to the council for its information within
3 30 days of completing the determinations.

4 85087. The board, by December 31, 2010, shall submit to the
5 Legislature a prioritized schedule and estimate of costs to complete
6 instream flow studies for the Delta and for high priority rivers and
7 streams in the Delta watershed, not otherwise covered by Section
8 85086, by 2012, and for all major rivers and streams outside the
9 Sacramento River watershed by 2018. In developing this schedule,
10 the board shall consult with the Department of Fish and Game as
11 to the timing of its submission of recommendations for instream
12 flow needs.

13 85088. Until the board issues an order approving a change in
14 the point of diversion of the State Water Project and the federal
15 Central Valley Project from the southern Delta to a point on the
16 Sacramento River as specified in subdivision (c) of Section 85086,
17 the department shall not commence construction of any diversion,
18 conveyance, or other facility necessary to divert and convey water
19 pursuant to the change in point of diversion.

20 85089. Construction of a new Delta conveyance facility shall
21 not be initiated until the persons or entities that contract to receive
22 water from the State Water Project and the federal Central Valley
23 Project or a joint powers authority representing those entities have
24 made arrangements or entered into contracts to pay for both of the
25 following:

26 (a) The costs of the environmental review, planning, design,
27 construction, and mitigation, including mitigation required pursuant
28 to Division 13 (commencing with Section 21000 of the Public
29 Resources Code), required for the construction, operation, and
30 maintenance of any new Delta water conveyance facility.

31 (b) Full mitigation of property tax or assessments levied by local
32 governments or special districts for land used in the construction,
33 location, mitigation, or operation of new Delta conveyance
34 facilities.

PART 3. DELTA GOVERNANCE

CHAPTER 1. DELTA STEWARDSHIP COUNCIL

85200. (a) The Delta Stewardship Council is hereby established as an independent agency of the state.

(b) (1) The council shall consist of seven voting members, of which four members shall be appointed by the Governor and confirmed by the Senate, one member shall be appointed by the Senate Committee on Rules, one member shall be appointed by the Speaker of the Assembly, and one member shall be the Chairperson of the Delta Protection Commission. Initial appointments to the council shall be made by July 1, 2010.

(2) No member of the council shall serve two consecutive terms, but a member may be reappointed after a period of two years following the end of his or her term, except that those members of the council that serve an initial term of one or two years may be immediately appointed to a subsequent full four-year term.

(c) (1) (A) The initial terms of two of the four members appointed by the Governor shall be four years:

(B) The initial terms of two of the four members appointed by the Governor shall be six years.

(C) The initial terms of the members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall be four years.

(D) Upon the expiration of each term described in subparagraphs (A), (B), or (C), the term of each succeeding member shall be four years.

(2) The Chairperson of the Delta Protection Commission shall serve as a member of the council for the period during which he or she holds the position as commission chairperson

(d) Any vacancy shall be filled by the appointing authority within 60 days. If the term of a council member expires, and no successor is appointed within the allotted timeframe, the existing member may serve up to 180 days beyond the expiration of his or her term.

(e) The council members shall select a chairperson from among their members, who shall serve for not more than four years in that capacity.

1 (f) The council shall meet once a month in a public forum. At
2 least two meetings each year shall take place at a location within
3 the Delta.

4 85201. (a) The chairperson shall serve full time. Other
5 members shall serve one-third time. The council may select a vice
6 chairperson and other officers determined to be necessary.

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

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

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

13 (e) The executive officer shall hire employees necessary to carry
14 out council functions.

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

18 (g) The salary of each employee of the council shall be
19 determined by the State Personnel Board, and shall reflect the
20 duties and responsibilities of the position.

21 (h) All persons employed by the council are state employees,
22 subject to the duties, responsibilities, limitations, and benefits of
23 the state.

24 85202. Council members shall possess diverse expertise and
25 reflect a statewide perspective.

26 85203. The headquarters of the council shall be located in
27 Sacramento.

28 85204. The council shall establish and oversee a committee of
29 agencies responsible for implementing the Delta Plan. Each agency
30 shall coordinate its actions pursuant to the Delta Plan with the
31 council and the other relevant agencies.

32

33 CHAPTER 2. MISSION, DUTIES, AND RESPONSIBILITIES OF THE
34 COUNCIL

35

36 85210. The council has all of the following powers:

37 (a) To sue or be sued.

38 (b) To enter into contracts.

39 (c) To employ the services of public, nonprofit, and private
40 entities.

- 1 (d) To delegate administrative functions to council staff.
- 2 (e) To employ its own legal staff or contract with other state or
- 3 federal agencies for legal services, or both. The council may
- 4 employ special legal counsel with the approval of the Attorney
- 5 General.
- 6 (f) To receive funds, including funds from private and local
- 7 governmental sources, contributions from public and private
- 8 sources, as well as state and federal appropriations.
- 9 (g) To disburse funds through grants, public assistance, loans,
- 10 and contracts.
- 11 (h) To request reports from state, federal, and local governmental
- 12 agencies on issues related to the implementation of the Delta Plan.
- 13 (i) To adopt regulations or guidelines as needed to carry out the
- 14 powers and duties identified in this division.
- 15 (j) To comment on state agency environmental impact reports
- 16 for projects outside the Delta that the council determines will have
- 17 a significant impact on the Delta.
- 18 (k) To hold hearings in all parts of the state necessary to carry
- 19 out the powers vested in it, and for those purposes has the powers
- 20 conferred upon the heads of state departments pursuant to Article
- 21 2 (commencing with Section 11180) of Chapter 2 of Part 1 of
- 22 Division 3 of Title 2 of the Government Code. Any hearing by the
- 23 council may be conducted by any member of the council, or other
- 24 designee, upon authorization of the council, and he or she shall
- 25 have the powers granted to the council by this section, provided
- 26 that any final action of the council shall be taken by a majority of
- 27 the membership of the council at a meeting duly called and held.
- 28 85210.5. A majority of the voting members of the council shall
- 29 constitute a quorum for the transaction of the business of the
- 30 council. A majority vote of the voting membership shall be required
- 31 to take action with respect to any matter unless otherwise specified
- 32 in this division. The vote of each member shall be individually
- 33 recorded.
- 34 85211. The Delta Plan shall include performance measurements
- 35 that will enable the council to track progress in meeting the
- 36 objectives of the Delta Plan. The performance measurements shall
- 37 include, but need not be limited to, quantitative or otherwise
- 38 measurable assessments of the status and trends in all of the
- 39 following:

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

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

7 85212. The council shall review and provide timely advice to
8 local and regional planning agencies regarding the consistency of
9 local and regional planning documents, including sustainable
10 communities strategies and alternative planning strategies prepared
11 pursuant to Section 65080 of the Government Code, with the Delta
12 Plan. The council’s input shall include, but not be limited to,
13 reviewing the consistency of local and regional planning documents
14 with the ecosystem restoration needs of the Delta and reviewing
15 whether the lands set aside for natural resource protection are
16 sufficient to meet the Delta’s ecosystem needs. A metropolitan
17 planning organization preparing a regional transportation plan
18 under Section 65080 of the Government Code that includes land
19 within the primary or secondary zones of the Delta shall consult
20 with the council early in the planning process regarding the issues
21 and policy choices relating to the council’s advice. No later than
22 60 days prior to the adoption of a final regional transportation plan,
23 the metropolitan planning organization shall provide the council
24 with a draft sustainable communities strategy and an alternative
25 planning strategy, if any. Concurrently, the metropolitan planning
26 organization shall provide notice of its submission to the council
27 in the same manner in which agencies file a certificate of
28 consistency pursuant to Section 85225. If the council concludes
29 that the draft sustainable communities strategy or alternative
30 planning strategy is inconsistent with the Delta Plan, the council
31 shall provide written notice of the claimed inconsistency to the
32 metropolitan planning organization no later than 30 days prior to
33 the adoption of the final regional transportation plan. If the council
34 provides timely notice of a claimed inconsistency, the metropolitan
35 planning organization’s adoption of the final regional transportation
36 plan shall include a detailed response to the council’s notice.

1 85225.25. After a hearing on an appealed action, the council
2 shall make specific written findings either denying the appeal or
3 remanding the matter to the state or local public agency for
4 reconsideration of the covered action based on the finding that the
5 certification of consistency is not supported by substantial evidence
6 in the record before the state or local public agency that filed the
7 certification. Upon remand, the state or local agency may determine
8 whether to proceed with the covered action. If the agency decides
9 to proceed with the action or with the action as modified to respond
10 to the findings of the council, the agency shall, prior to proceeding
11 with the action, file a revised certification of consistency that
12 addresses each of the findings made by the council and file that
13 revised certification with the council.

14 85225.30. The council shall adopt administrative procedures
15 governing appeals, which shall be exempt from Chapter 3.5
16 (commencing with Section 11340) of Part 1 of Division 3 of Title
17 2 of the Government Code.

18
19 CHAPTER 4. DELTA WATERMASTER
20

21 85230. (a) The board, in consultation with the council, shall
22 appoint, for a term of four years, a special master for the Delta,
23 whose title shall be “the Delta Watermaster.”

24 (b) The board shall adopt internal procedures delegating
25 authority to the Delta Watermaster. The Delta Watermaster shall
26 exercise the board’s authority to provide timely monitoring and
27 enforcement of board orders and permit terms and conditions. The
28 Delta Watermaster’s delegated authority shall include authority
29 to require monitoring and reporting, authority for approvals
30 delegated to an officer or employee of the board by the terms of
31 a water right permit or license, authority to approve temporary
32 urgency changes pursuant to Chapter 6.6 (commencing with section
33 1435) of Part 2 of Division 2, and authority to issue a notice of
34 proposed cease and desist order or administrative civil liability
35 complaint. The Delta Watermaster’s authority shall be limited to
36 diversions in the Delta and the application and enforcement of the
37 board’s requirements that apply to conditions in the Delta.

38 (c) The internal procedures adopted by the board shall provide
39 for due process in adjudicative proceedings, and may establish
40 procedures for the issuance of a stay of any order or decision of

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

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

10

11 CHAPTER 5. DELTA INDEPENDENT SCIENCE BOARD AND DELTA
12 SCIENCE PROGRAM

13

14 85280. (a) The Delta Independent Science Board is hereby
15 established in state government.

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

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

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

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

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

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

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

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

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

9 (D) Have the capability to guide the application of an adaptive
10 management process to resource management policy decisions in
11 the Delta.

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

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

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

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

33

34 PART 4. COMPREHENSIVE DELTA PLANNING

35

36 CHAPTER 1. THE DELTA PLAN

37

38 85300. (a) On or before January 1, 2012, the council shall
39 develop, adopt, and commence implementation of the Delta Plan
40 pursuant to this part that furthers the coequal goals. The Delta Plan

1 shall include subgoals and strategies to assist in guiding state and
2 local agency actions related to the Delta. In developing the Delta
3 Plan, the council shall consider each of the strategies and actions
4 set forth in the Strategic Plan and may include any of those
5 strategies or actions in the Delta Plan. The Delta Plan may also
6 identify specific actions that state or local agencies may take to
7 implement the subgoals and strategies.

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

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

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

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

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

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

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

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

32 85301. (a) The commission shall develop, for consideration
33 and incorporation into the Delta Plan by the council, a proposal to
34 protect, enhance, and sustain the unique cultural, historical,
35 recreational, agricultural, and economic values of the Delta as an
36 evolving place, in a manner consistent with the coequal goals. For
37 the purpose of carrying out this subdivision, the commission may
38 include in the proposal the relevant strategies described in the
39 Strategic Plan.

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

5 (2) The commission shall include in the proposal a regional
6 economic plan to support increased investment in agriculture,
7 recreation, tourism, and other resilient land uses in the Delta. The
8 regional economic plan shall include detailed recommendations
9 for the administration of the Delta Investment Fund created by
10 Section 29778.5 of the Public Resources Code.

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

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

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

25 (d) The commission shall submit the proposal developed
26 pursuant to subdivision (a) to the council. The council shall
27 consider the proposal and may include any portion of the proposal
28 in the Delta Plan if the council, in its discretion, determines that
29 the portion of the proposal is feasible and consistent with the
30 objectives of the Delta Plan and the purposes of this division.

31 85302. (a) The implementation of the Delta Plan shall further
32 the restoration of the Delta ecosystem and a reliable water supply.

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

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

40 (1) Viable populations of native resident and migratory species.

- 1 (2) Functional corridors for migratory species.
- 2 (3) Diverse and biologically appropriate habitats and ecosystem
- 3 processes.
- 4 (4) Reduced threats and stresses on the Delta ecosystem.
- 5 (5) Conditions conducive to meeting or exceeding the goals in
- 6 existing species recovery plans and state and federal goals with
- 7 respect to doubling salmon populations.
- 8 (d) The Delta Plan shall include measures to promote a more
- 9 reliable water supply that address all of the following:
- 10 (1) Meeting the needs for reasonable and beneficial uses of
- 11 water.
- 12 (2) Sustaining the economic vitality of the state.
- 13 (3) Improving water quality to protect human health and the
- 14 environment.
- 15 (e) The following subgoals and strategies for restoring a healthy
- 16 ecosystem shall be included in the Delta Plan:
- 17 (1) Restore large areas of interconnected habitats within the
- 18 Delta and its watershed by 2100.
- 19 (2) Establish migratory corridors for fish, birds, and other
- 20 animals along selected Delta river channels.
- 21 (3) Promote self-sustaining, diverse populations of native and
- 22 valued species by reducing the risk of take and harm from invasive
- 23 species.
- 24 (4) Restore Delta flows and channels to support a healthy estuary
- 25 and other ecosystems.
- 26 (5) Improve water quality to meet drinking water, agriculture,
- 27 and ecosystem long-term goals.
- 28 (6) Restore habitat necessary to avoid a net loss of migratory
- 29 bird habitat and, where feasible, increase migratory bird habitat
- 30 to promote viable populations of migratory birds.
- 31 (f) The council shall consider, for incorporation into the Delta
- 32 Plan, actions designed to implement the subgoals and strategies
- 33 described in subdivision (e).
- 34 (g) In carrying out this section, the council shall make use of
- 35 the best available science.
- 36 (h) The Delta Plan shall include recommendations regarding
- 37 state agency management of lands in the Delta.
- 38 85303. The Delta Plan shall promote statewide water
- 39 conservation, water use efficiency, and sustainable use of water.

1 85304. The Delta Plan shall promote options for new and
2 improved infrastructure relating to the water conveyance in the
3 Delta, storage systems, and for the operation of both to achieve
4 the coequal goals.

5 85305. (a) The Delta Plan shall attempt to reduce risks to
6 people, property, and state interests in the Delta by promoting
7 effective emergency preparedness, appropriate land uses, and
8 strategic levee investments.

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

13 85306. The council, in consultation with the Central Valley
14 Flood Protection Board, shall recommend in the Delta Plan
15 priorities for state investments in levee operation, maintenance,
16 and improvements in the Delta, including both levees that are a
17 part of the State Plan of Flood Control and nonproject levees.

18 85307. (a) The Delta Plan may identify actions to be taken
19 outside of the Delta, if those actions are determined to significantly
20 reduce flood risks in the Delta.

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

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

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

31 85308. The Delta Plan shall meet all of the following
32 requirements:

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

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

38 (c) Where appropriate, utilize monitoring, data collection, and
39 analysis of actions sufficient to determine progress toward meeting
40 the quantified targets.

1 (d) Describe the methods by which the council shall measure
2 progress toward achieving the coequal goals.

3 (e) Where appropriate, recommend integration of scientific and
4 monitoring results into ongoing Delta water management.

5 (f) Include a science-based, transparent, and formal adaptive
6 management strategy for ongoing ecosystem restoration and water
7 management decisions.

8 85309. The department, in consultation with the United States
9 Army Corps of Engineers and the Central Valley Flood Protection
10 Board, shall prepare a proposal to coordinate flood and water
11 supply operations of the State Water Project and the federal Central
12 Valley Project, and submit the proposal to the council for
13 consideration for incorporation into the Delta Plan. In drafting the
14 proposal, the department shall consider all related actions set forth
15 in the Strategic Plan.

16

17 CHAPTER 2. BAY DELTA CONSERVATION PLAN

18

19 85320. (a) The Bay Delta Conservation Plan (BDCP) shall be
20 considered for inclusion in the Delta Plan in accordance with this
21 chapter.

22 (b) The BDCP shall not be incorporated into the Delta Plan and
23 the public benefits associated with the BDCP shall not be eligible
24 for state funding, unless the BDCP does all of the following:

25 (1) Complies with Chapter 10 (commencing with Section 2800)
26 of Division 3 of the Fish and Game Code.

27 (2) Complies with Division 13 (commencing with Section
28 21000) of the Public Resources Code, including a comprehensive
29 review and analysis of all of the following:

30 (A) A reasonable range of flow criteria, rates of diversion, and
31 other operational criteria required to satisfy the criteria for approval
32 of a natural community conservation plan as provided in
33 subdivision (a) of Section 2820 of the Fish and Game Code, and
34 other operational requirements and flows necessary for recovering
35 the Delta ecosystem and restoring fisheries under a reasonable
36 range of hydrologic conditions, which will identify the remaining
37 water available for export and other beneficial uses.

38 (B) A reasonable range of Delta conveyance alternatives,
39 including through-Delta, dual conveyance, and isolated conveyance

1 alternatives and including further capacity and design options of
2 a lined canal, an unlined canal, and pipelines.

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

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

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

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

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

15 (c) The department shall consult with the council and the Delta
16 Independent Science Board during the development of the BDCP.
17 The council shall be a responsible agency in the development of
18 the environmental impact report. The Delta Independent Science
19 Board shall review the draft environmental impact report and
20 submit its comments to the council and the Department of Fish
21 and Game.

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

27 (e) If the Department of Fish and Game approves the BDCP as
28 a natural community conservation plan pursuant to Chapter 10
29 (commencing with Section 2800) of Division 3 of the Fish and
30 Game Code and determines that the BDCP meets the requirements
31 of this section, and the BDCP has been approved as a habitat
32 conservation plan pursuant to the federal Endangered Species Act
33 (16 U.S.C. Section 1531 et seq.), the council shall incorporate the
34 BDCP into the Delta Plan. The Department of Fish and Game's
35 determination that the BDCP has met the requirements of this
36 section may be appealed to the council.

37 (f) The department, in coordination with the Department of Fish
38 and Game, or any successor agencies charged with BDCP
39 implementation, shall report to the council on the implementation

1 of the BDCP at least once a year, including the status of monitoring
2 programs and adaptive management.

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

9 85321. The BDCP shall include a transparent, real-time
10 operational decisionmaking process in which fishery agencies
11 ensure that applicable biological performance measures are
12 achieved in a timely manner with respect to water system
13 operations.

14 85322. This chapter does not amend, or create any additional
15 legal obligation or cause of action under, Chapter 10 (commencing
16 with Section 2800) of Division 3 of the Fish and Game Code or
17 Division 13 (commencing with Section 21000) of the Public
18 Resources Code.

19

20 CHAPTER 3. OTHER PLANS FOR THE DELTA

21

22 85350. The council may incorporate other completed plans
23 related to the Delta into the Delta Plan to the extent that the other
24 plans promote the coequal goals.

25 SEC. 77. (a) Pursuant to Section 75026 of the Public Resources
26 Code, the sum of twenty-eight million dollars (\$28,000,000) is
27 hereby appropriated to the Department of Water Resources for
28 expenditure by that department pursuant to paragraph (12) of
29 subdivision (a) of Section 75027 of the Public Resources Code for
30 the Two-Gates Fish Protection Demonstration Program managed
31 by the United States Bureau of Reclamation. The Department of
32 Water Resources shall expend such funds only consistent with the
33 requirements of Sections 75026 and 75027 of the Public Resources
34 Code.

35 (b) It is the intent of the Legislature to finance the activities of
36 the Delta Stewardship Council and the Sacramento-San Joaquin
37 Delta Conservancy from funds made available pursuant to the
38 Disaster Preparedness and Flood Prevention Bond Act of 2006
39 (Chapter 1.699 (commencing with Section 5096.800) of Division
40 5 of the Public Resources Code) and the Safe Drinking Water,

1 Water Quality and Supply, Flood Control, River and Coastal
2 Protection Bond Act of 2006 (Division 43 (commencing with
3 Section 75001) of the Public Resources Code).

4 SEC. 78. Item 3940-001-0439 of Section 2.00 of the Budget
5 Act of 2009 is amended to read:

6
7 3940-001-0439—For support of State Water Resources Control
8 Board..... 238,113,000

9 Schedule:

- 10 (1) 10-Water Quality..... 439,650,000
- 11 (2) 20-Water Rights..... 15,408,000
- 12 (3) 30.01-Administration..... 21,059,000
- 13 (4) 30.02-Distributed Administration..... -21,059,000
- 14 (5) Reimbursements..... -8,932,000
- 15 (6) Amount payable from the General
16 Fund (Item 3940-001-0001)..... -40,575,000
- 17 (7) Amount payable from the Unified Pro-
18 gram Account (Item 3940-001-0028).... -621,000
- 19 (8) Amount payable from the Waste Dis-
20 charge Permit Fund (Item 3940-001-
21 0193)..... -78,768,000
- 22 (9) Amount payable from the Marine Inva-
23 sive Species Control Fund (Item 3940-
24 001-0212)..... -103,000
- 25 (10) Amount payable from the Public Re-
26 sources Account, Cigarette and Tobacco
27 Products Surtax Fund (Item 3940-001-
28 0235)..... -2,039,000
- 29 (11) Amount payable from the Integrated
30 Waste Management Account, Integrated
31 Waste Management Fund (Item 3940-
32 001-0387)..... -6,757,000
- 33 (12) Amount payable from the Water Recy-
34 cling Subaccount (Item 3940-001-
35 0419)..... -1,150,000
- 36 (13) Amount payable from the Drainage
37 Management Subaccount (Item 3940-
38 001-0422)..... -515,000

1	(14) Amount payable from the Seawater In-	
2	trusion Control Subaccount (Item 3940-	
3	001-0424).....	-222,000
4	(15) Amount payable from the Underground	
5	Storage Tank Tester Account (Item	
6	3940-001-0436).....	-64,000
7	(16) Amount payable from the 1984 State	
8	Clean Water Bond Fund (Item 3940-	
9	001-0740).....	-322,000
10	(17) Amount payable from the Federal	
11	Trust Fund (Item 3940-001-0890).....	-51,353,000
12	(18) Amount payable from the Water	
13	Rights Fund (Item 3940-001-3058)....	-11,197,000
14	(19) Amount payable from the Watershed	
15	Protection Subaccount (Item 3940-001-	
16	6013).....	-250,000
17	(20) Amount payable from the Santa Ana	
18	River Watershed Subaccount (Item	
19	3940-001-6016).....	-250,000
20	(21) Amount payable from the Lake Elsinore	
21	and San Jacinto Watershed Subaccount	
22	(Item 3940-001-6017).....	-150,000
23	(22) Amount payable from the Nonpoint	
24	Source Pollution Control Subaccount	
25	(Item 3940-001-6019).....	-200,000
26	(23) Amount payable from the State Revolv-	
27	ing Fund Loan Subaccount (Item 3940-	
28	001-6020).....	-81,000
29	(24) Amount payable from the Wastewater	
30	Construction Grant Subaccount (Item	
31	3940-001-6021).....	-23,000
32	(25) Amount payable from the Coastal	
33	Nonpoint Source Control Subaccount	
34	(Item 3940-001-6022).....	-150,000
35	(26) Amount payable from the Water Secu-	
36	rity, Clean Drinking Water, Coastal and	
37	Beach Protection Fund of 2002 (Item	
38	3940-001-6031).....	-3,000,000

1	(27) Amount payable from the Safe Drinking	
2	Water, Water Quality and Supply,	
3	Flood Control, River and Coastal Pro-	
4	tection Fund of 2006 (Item 3940-001-	
5	6051).....	-4,073,000
6	(28) Amount payable from the Petroleum	
7	Underground Storage Tank Financing	
8	Account (Item 3940-001-8026).....	-618,000
9	(29) Amount payable from the State Water	
10	Pollution Control Revolving Fund Ad-	
11	ministration Fund (Item 3940-001-	
12	9739).....	-5,532,000

13 Provisions:

- 14 1. Notwithstanding any other provision of law, upon ap-
 15 proval and order of the Director of Finance, the State
 16 Water Resources Control Board may borrow sufficient
 17 funds for cash purposes from special funds that other-
 18 wise provide support for the board. Any such loans
 19 are to be repaid with interest at the rate earned in the
 20 Pooled Money Investment Account.
- 21 2. Of the amount contained in Schedule (2), \$3,750,000
 22 shall be used to fund 25.0 permanent positions in
 23 support of water rights enforcement.

24
25 SEC. 79. Item 3940-001-3058 of Section 2.00 of the Budget
26 Act of 2009 is amended to read:

27		
28	3940-001-3058—For support of State Water Resources Control	
29	Board, for payment to Item 3940-001-0439, payable from	
30	the Water Rights Fund.....	11,197,000

31 Provisions:

- 32 1. The increase in appropriation in this item shall be paid
 33 only from the fee revenue in the Water Rights Fund.

34
35 SEC. 80. Commencing with the 2010–11 fiscal year, and
36 notwithstanding Section 13340 of the Government Code, three
37 million seven hundred fifty thousand dollars (\$3,750,000) is hereby
38 continuously appropriated, without regard to fiscal years, on an
39 annual basis, only from the fee revenue in the Water Rights Fund
40 to the State Water Resources Control Board for the purposes of

1 funding 25.0 permanent water right enforcement positions, as
2 provided in Schedule (2) of Item 3940-001-0439 of Section 2.00
3 of the Budget Act of 2009, as amended by this act.

4 SEC. 81. If the Commission on State Mandates determines
5 that this act contains costs mandated by the state, reimbursement
6 to local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.

O