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Overview of the 2009 Comprehensive Water Legislation

On November 4, 2009, the California Legislature completed work on a comprehensive package of water reform bills. The Governor signed the entire package on November 10, 2009. The package consists of five bills, each dealing with a different area of water law and water resources:

SBx7 1: Water Supply Reliability and Delta Restoration.

This bill establishes a framework for improving conveyance of water through or around the San Joaquin - Sacramento Delta, and restoring the Delta ecosystem. It creates a Delta Stewardship Council which will oversee and coordinate the various agencies that regulate various resources in and around the Delta.

The Council will adopt a Delta Plan for water conveyance and ecosystem restoration, and be responsible for determining whether actions of various agencies are consistent with the Plan. The council will also appoint a Delta Independent Science Board which will be responsible for "providing unbiased scientific information to inform water and environmental decision-making in the Delta."

This bill also establishes a framework for completion and implementation of the Bay Delta Conservation Plan, a multi-agency effort intended to recover various threatened and endangered species in the Bay-Delta ecosystem.

The DSC is the successor to the California Bay-Delta Authority, and the CALFED Bay-Delta Program. The DSC is an independent state agency, not subject to review by an umbrella state agency, secretary or department head. The council is expected to operate with more

independence and authority than previous agencies with similar duties.

SBx7 2: Water Bond.

This bill will place an \$11.4 billion bond measure on the on the November, 2010 general election ballot. The “Safe, Clean, and Reliable Drinking Water Supply Act of 2010” would provide funding for a wide variety of water supply and environmental projects, including: \$3 billion for new reservoirs to augment the existing state system; \$2.25 billion for projects to restore the Delta ecosystem; \$1.785 billion for conservation and watershed projects; \$1.4 billion for regional water supply reliability projects; \$1.25 billion for water recycling projects; \$1 billion for groundwater cleanup projects; and \$455 million for drought relief projects.

SBx7 6: Groundwater monitoring.

This bill establishes a statewide system for local agencies to monitor and report groundwater elevation data to the State Department of Water Resources. For many areas of the state, it is anticipated that this monitoring and reporting will be performed by existing water agencies or other local government entities, largely using existing monitoring programs. However, in the event that no local monitoring agency takes responsibility, and the county in question declines to take responsibility, then the county and all other eligible reporting entities within the county become ineligible for any state water loan or grant.

The new statewide monitoring program does not affect either the validity or the exercise of any groundwater rights. Local agencies that monitor and report are restricted from requiring data from private well owners or entering private property to collect such data.

Various local government entities, including watermasters of groundwater basins, will have to review this legislation, consider whether they are eligible reporting entities for the basins they overlay, whether there are other eligible reporting entities for the basin, who will apply to DWR to be designated the reporting entity, and what actions to take in the event that their county declines to take responsibility for any unmonitored basins within the county.

SBx7 7: Water conservation.

This bill establishes a statewide water conservation mandate to be overseen by the state Department of Water Resources and carried out by local water agencies. Urban retail water suppliers will have to establish conservation targets (generally expected to be 20%, some areas as low as 5%), measured in gallons per day per capita in their service area, and meet those targets by 2020. Failure to comply with these reductions will put water agencies at risk for losing eligibility for state loans and water grants. Agencies will have four different methods to choose from for setting their conservation target. One of the options remains to be developed in detail by a stakeholder group under auspices of the Department of Water Resources through regulations in 2010.

The bill includes a series of provisions to protect manufacturing water uses and water uses that have health or safety purposes from imposition of arbitrary water use reduction requirements by water suppliers.

In addition, the bill requires most agricultural water suppliers to develop and implement agricultural water management plans (“AWMPs”). This bill will require agricultural water suppliers to instate AWMPs before December 31, 2012, and regularly update them every five years after that.

Following enactment of this bill, the Department of Water Resources will be developing and issuing regulations dealing with conservation targets, process water protections, and the formation of a task force to provide advice on conservation in the business sector.

SBx7 8: Water Rights Enforcement and Funding.

This bill has two components. One appropriates funds from prior natural resource bonds and other sources to fund the work that various state agencies must undertake to implement the policy changes in the package.

The second element makes various changes to the administration and enforcement of surface water rights, including expanding the class of those who must file regular diversion reports, and increasing the penalties for failing to file or make a false statement in those reports. The bill also adds 25 positions to the Division of Water Rights at the State Water Resources Control Board for increased enforcement against un-permitted surface water diversions. The new DWR positions will be funded by the fees imposed on water right holders.

Similar to the groundwater monitoring bill, this bill makes no substantive changes to the laws governing water rights for surface water diversions. However, the significance of the new reporting requirements and penalties for failure to report, or improper reporting, will likely result in more enforcement activities.

This bill will most likely have its largest effect in areas where diversions were previously unreported, including within the Delta, and in the Russian and Napa River watersheds and other areas where diversions have been occurring pending permitting under filed water rights applications.

Why the Delta Stewardship Council is So Important to California’s Future

For the past three years, California has faced an unprecedented water crisis: devastating drought, lack of adequate storage facilities, and no tangible manner of delivering water to where it is needed most. This has detrimentally impacted the state’s economy, the ability of local governments to attract business and development, our drought-stricken farms, and residents who face increased water rates.

There are a few key elements that could close that gap between hoping for adequate water supply, and making it a reality. First is the passage of the Safe, Clean, and Reliable Water Supply Act of 2010, the \$1.11 billion general bond measure on the November ballot. And the second is the actions of the Delta Stewardship Council, a relatively new, independent state entity that will determine the course of water policy for the next decade and beyond.

There's no question that the bond desperately needs to be passed, if Californians have any realistic expectation of stable Delta ecology and a reliable water system. Bond funds are needed to implement the comprehensive water reform measures enacted by the Legislature late last year, including \$3.3 billion for statewide water system improvements and \$4.4 billion in water supply reliability. The bond and water bills are critically important to modernize our aging infrastructure, maximize our precious resources in drought years, and ensure an adequate water supply that can be directed to the area of greatest need.

Regardless of the bond's passage or defeat, however, Californians must carefully follow the Delta Stewardship Council, which is tasked with overseeing and coordinating the various agencies that regulate resources in and around the San Joaquin-Sacramento Delta, adopting a Delta Plan for water conveyance and ecosystem restoration, and determining whether actions of various agencies are consistent with the Plan. The Council is also charged with incorporating the Bay Delta Conservation Plan, a multi-agency effort intended to recover various threatened and endangered species in the Bay-Delta ecosystem.

Over the course of the next few years, the Council will embark on an ambitious agenda to, according to Governor Schwarzenegger, "reform, restore and rebuild California's vital water system," which could feasibly include the authorization of a water conveyance system. Water in California – primarily "captured" and stored in the northern part of the state – is conveyed throughout the state via two massive water systems: the State Water Project (SWP) and the Central Valley Project (CVP). The SWP, and to a lesser extent the Colorado River, are the main sources of water for most of Southern California, including the Inland Empire.

This year's above-average winter storms and replenished storage have helped, but cannot solve California's long-term water supply problem. In fact, while Lake Shasta, which feeds the CVP, is 97 percent full with additional snowfall to supply it, the Lake Oroville reservoir that serves the SWP remains only 69 percent full. This may temporarily help irrigation districts, residents, and farmers in the parched San Joaquin Valley, but will do little mitigate water restrictions in Southern California nor establish water reliability statewide in the long run.

The ramifications of the state's broken water system are significant. In 2009 alone, experts at the University of California estimated that water shortages caused by the drought and regulatory requirements cost California's economy more than \$1 billion and eliminated more than 20,000 jobs. Businesses that depend upon an abundant and reliable water supply were hardest hit. Water rates have been pre-emptively raised for over 20 million people across Southern California, as residents in urban areas pay more for less water. Homebuilding and new development continues to be severely restricted or blocked altogether in communities that can no longer certify that there is a reliable water supply to support it.

The water bond on the November ballot is designed to alleviate these problems. And the Delta Stewardship Council should be encouraged to closely follow the statutory timelines for developing an action plan. Vitality throughout the state can be achieved if the Council navigates through the complex maze of federal and state regulatory agencies and rules, to set the path for water reliability that will lead to a prosperous, growing California.

Delta Stewardship Council

The Delta Stewardship Council was created in SBX7 1 by Senator Joe Simitian (D-Palo Alto), which established the framework to achieve the co-equal goals of providing a more reliable water supply to California and restoring and enhancing the Delta ecosystem.

As created in the bill, the Delta Stewardship Council consists of seven members, four appointed by the Governor, one appointed by the President Pro Tempore of the Senate and one appointed by the Speaker of the Assembly. The Chairperson of the Delta Protection Commission is a permanent member of the Council.

The Council is tasked with:

- Developing a Delta Plan to guide state and local actions in the Delta in a manner that furthers the co-equal goals of Delta restoration and water supply reliability;
- Developing performance measures for the assessment and tracking of progress and changes to the health of the Delta ecosystem, fisheries, and water supply reliability;
- Determining if a state or local agency's project in the Delta is consistent with the Delta Plan and the co-equal goals, and acting as the appellate body in the event of a claim that such a project is inconsistent with the goals; and
- Determining the consistency of the Bay-Delta Conservation Plan (BDCCP) with the co-equal goals.

Council members are:

Randy Fiorini, of Turlock, has been managing partner of Fiorini Ranch since 1975 and managing partner of FarmCo since 2001. Previously, Fiorini was president of Fiorini Family Vineyards from 2002 to 2008 and owner of Farm Data from 1984 to 2000. He is past president and board member of the Association of California Water Agencies, past board president and director of Turlock Irrigation District Division #5, and past president and board member of the California Farm Water Coalition. Fiorini holds a Bachelor of Science in Fruit Science from California Polytechnic State University, San Luis Obispo. He was appointed to the Delta Stewardship Council in March 2010 by Governor Arnold Schwarzenegger.

Gloria D. Gray of Inglewood, CA, has been an elected member of the Board of Directors of the West Basin Municipal Water District since 2006. In 2009 she was appointed to be one of two West Basin representatives on the 38-member board of the Metropolitan Water District of Southern California. Ms. Gray dedicated her 36-year career to the Los Angeles County Departments of Human Services and Health Services, last serving as an Associate Hospital Administrator. She was appointed to the Los Angeles County Hospital and Health Care Delivery Commission, and served two terms on the Inglewood Unified School District, from 1995 - 2003. She holds a bachelor's degree in Business Administration from the University of Redlands, a Health Services Management Certificate from the University of California, Los Angeles and a master's degree in Governance Certificate from the California School Boards Association. She was appointed to the Delta Stewardship Council in February 2010 by Speaker of the Assembly Karen Bass.

Phil Isenberg, of Sacramento, has served as president of Isenberg/O'Haren Government Relations since 2005. From 1977 to 2004, he was counsel for Miller, Owens and Trost, Attorneys at Law. Previously, Isenberg served as a member of the California State Assembly representing the 9th District from 1992 to 1996 and the 10th District from 1982 to 1992. From 1975 to 1982, Isenberg was mayor of the city of Sacramento from 1971 to 1975. Isenberg served as chair of the California Marine Life Protection Act Blue Ribbon Task Force from 2004 to 2006 and served as chair of the Delta Vision Blue Ribbon Task Force from 2007 to 2008, which was reformed into the Delta Vision Foundation, a private association, where Isenberg has served as chair since 2009. He is also a member of the Sacramento Valley Conservancy Advisory Board. Isenberg holds a Doctor of Jurisprudence from the University of California, Berkeley Boalt Hall School of Law and a Bachelor of Art in Social Science and Government from California State University, Sacramento. He was appointed to the Delta Stewardship Council in March 2010 by Governor Arnold Schwarzenegger.

Patrick Johnston, of Stockton, is the President and CEO of the California Association of Health Plans. He served 20 years in the Legislature, 10 in the Assembly and 10 in the Senate. He chaired the Senate Committee on Appropriations for six years and chaired the Assembly Committee on Finance and Insurance for four years. Beyond his years in the legislature, Mr. Johnston worked for Health Net in government relations and taught public policy part-time at the University of California, Berkeley, and the University of the Pacific. He is an advisory board member of the UC Berkeley Petris Center on Health Care Markets and is a former member of the California Bay-Delta Authority and the California Delta Protection Commission. Mr. Johnston is a graduate of St Patrick's College and holds a Master's Degree from CSU Sacramento. He was appointed to the Delta Stewardship Council in March 2010 by the Senate Committee on Rules.

Hank Nordhoff, of Del Mar, has been chairman and chief executive officer of Gen-Probe, Incorporated since 1994. From 1992 to 1994, he served as president and chief executive officer of Targe Tech and from 1988 to 1992 he was president and chief executive officer of American Biogenetic Sciences. From 1986 to 1988, Nordhoff was vice president of mergers and acquisition for Sterling Drug Company and from 1970 to 1986, he was director of licensing and business development for Pfizer Pharmaceuticals. He holds a Master of Business Administration in international business and finance from Columbia University and a Bachelor of Arts in international relations and political economy from Johns Hopkins University. Nordhoff served in the United States Navy from 1963 to 1967. He was appointed to the Delta Stewardship Council in March 2010 by Governor Arnold Schwarzenegger.

Don Nottoli, of Galt, CA, is a member of the Sacramento County Board of Supervisors, first elected in November 1994, His district includes portions of the City of Sacramento as well as several suburban communities, rural agricultural areas, as well as portions of the Sacramento River Delta. Prior to his election, Don served as chief assistant to former Fifth District Supervisor Toby Johnson for 16 years. Don is a former member of the Galt City Council and served for more than 17 years as a board member with the Galt High School District Board of Trustees. He holds a Bachelor of Arts degree in Government/Journalism from California State University, Sacramento. He was appointed to the Delta Stewardship Council in February 2010 as chair of the Delta Protection Commission.

Richard Roos-Collins, of Berkeley, has been director of legal services for the Natural Heritage Institute Since 1991. Previously, he served as deputy attorney general of the public rights division for the California Department of Justice from 1989 to 1991. From 1986 to 1989, Roos-Collins was attorney-advisor for the Office of the General Counsel, United States Environmental Protection Agency. He is co-chair of the Agricultural Water Management Council and a member of the Bay Delta Conservation Plan Steering Committee. Roos-Collins is also director of the Pacific Forest and Watershed Lands Stewardship Council and founding director of the Hydropower Reform Coalition. He holds a Doctor of Jurisprudence from Harvard Law School and a Bachelor of Arts in English from Princeton University. He was appointed to the Delta Stewardship Council in March 2010 by Governor Arnold Schwarzenegger.

What is the Alliance for a 21st Century Water System?

The Alliance for a 21st Century Water System was formed in early 2009 to address California's water crisis – a crisis that threatens every aspect of our quality of life.

The Alliance brought together business and local community leaders, elected officials and industry executives, public water organizations, labor organizations, and prominent spokespeople for the interests of farmers, urban residents, and small businesses. The Alliance was actively involved in soliciting statewide participation to further the development and passage of the 2009 comprehensive water package. This comprehensive water package will guide California's water policy well into the next decade and beyond, and will have far-reaching impacts that will affect every industry and sector in the state.

We are continuing to monitor the implementation of the water package and will be closely following the activities of the newly created Delta Stewardship Council (DSC) and the timeline for the Bay Delta Conservation Plan. Our goal is to educate, inform, and engage Californians statewide in the development and implementation of California's water policy.

Although the Alliance is educational in nature and does not take positions on state or federal policy, we support **five key principles** that are essential for the comprehensive solution that the state so desperately needs. Those five principles are:

- *Repair the Delta* -- Restoring the environmental health of the Sacramento San Joaquin Delta must be the starting point. Protecting Delta water quality, enhancing habitat and fisheries, and preserving the values of the Delta as an evolving place are all essential elements of a comprehensive solution to the water crisis.
- *Tunnel/ Canal*-- Moving the intake points for the state and federal water systems from their present location in the southern Delta to a location on the Sacramento River will benefit Delta fisheries and safeguard water quality for 25 million people. Experts and policymakers all agree that moving the intakes and building a tunnel or canal instead offers the best and most economical choice for meeting the needs of the environment and the public.
- *New Storage* -- Without adequate storage facilities, California every year loses billions of gallons of fresh water that could be used to supply cities and farms. With decreasing

snowmelt in lower rainfall years, new infrastructure will be needed to manage water resources for both fish and people.

- *Integration of the two water systems* -- California's State Water Project and the federal Central Valley Project form the backbone of the modern water system that drives \$30 billion of the state's economy. Integrating the operation of the two systems under state authority would increase the efficiency of water deliveries, reduce costs for water users and improve maintenance.

- *Affordable Water Supply* -- In addition to making water supplies more reliable, we also need to ensure that they will be affordable. Water users – not the taxpayers - should pay the costs for new conveyance facilities, for necessary environmental mitigation in the Delta, and for those aspects of additional storage that provide water ratepayers with a direct benefit in the form of assurances of adequate and reliable water supplies.

What You Can Do

Stay informed! It is critically important that the many affected interests in California stay educated and informed on the implementation of the 2009 legislative water package. Please become a coalition member today by going to www.californiawatersavers.com and clicking on the "Join Us" link. We'll make sure that you have the most up-to-date information on matters related to water policy.