

- **Board of Directors**  
**Communications and Legislation Committee**  
**CALFED/Bay-Delta Oversight Subcommittee**

July 12, 2005 Board Meeting

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**9-3**

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**Subject**

Report on SB 350 (Machado, D-Linden) regarding San Joaquin River restoration

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**Description**

**Bill Summary.** Senator Mike Machado, member of the Senate Natural Resources and Water Committee and Chairman of the Senate Subcommittee on Delta Resources, has introduced Senate Bill 350 (**Attachment 1**), a bill that attempts to expedite San Joaquin River restoration. The bill is sponsored by the Natural Resources Defense Council (NRDC) and would establish the San Joaquin River Fund (Fund) to provide grants for “restoration of streamflows and native anadromous fish populations” or “acquisition of cost-effective replacement water supplies and related actions.” The bill would appropriate \$9.16 million from Proposition 13 to the Fund and direct the Secretary of Resources to expend funds in roughly equal amounts for restoration and water supply projects. Further, the bill finds that the San Joaquin River is important for both environmental values and the agricultural economy. The bill seeks to “avoid or minimize potential adverse effects on Friant contractors, agricultural communities, and farm workers in the southern San Joaquin Valley.” Finally, the bill prohibits using the Fund to fallow land and states that the bill is not intended to influence ongoing litigation.

**Background.** In recent years, Metropolitan has been increasingly involved in activities to improve water quality in the lower San Joaquin River, especially to reduce salinity concentrations in Metropolitan’s State Water Project (SWP) supplies. SB 350 raises issues related to the upper San Joaquin River (i.e. above the confluence of the Merced River) which will likely be central to California water policy for years to come.

Since 1998, Metropolitan and the Friant Water Users Authority (Friant) have been working to develop a water quality exchange partnership to improve source water quality for Southern California, provide resources to enable Friant to accommodate actions to restore the San Joaquin River and generally improve the reliability of Friant’s supply. These activities have been undertaken pursuant to agreements approved by the Friant and Metropolitan Board of Directors. While the partnership has developed very slowly (largely because of the conflict between Friant and the NRDC discussed below), water quality exchanges may be an effective tool for reducing TDS, bromides and organic carbons in Metropolitan’s SWP supplies.

Friant and NRDC have been in an intense conflict in the courts since 1988, with a brief truce from 1999 to 2003. A much-heralded settlement effort collapsed after Friant rejected a proposal from a settlement judge that Friant argued opened the door to potentially ruinous economic impacts as a result of reallocating water to fisheries and away from agricultural uses. On August 20, 2004, U.S. District Judge Lawrence K. Karlton ruled that Friant Dam operations violate provisions of the California Fish and Game Code related to water flows and fisheries downstream from the dams, but he did not indicate how much water might eventually be ordered released to the River from Friant Dam. In April 2005, Judge Karlton announced he would reopen the trial on February 14, 2006, for completion by May 1, 2006.

**Future Actions.** Metropolitan has an interest in actions taken on the San Joaquin River because the actions could improve source water quality and, potentially, improve the regulatory environment for SWP operations by helping to increase fish populations. Staff believes that management actions on the San Joaquin River must be based on the best available science. In particular, an open, scientific process should be used to determine the best approach to fisheries restoration on the San Joaquin River. Further, to the maximum practical extent, local and regional interests in the areas affected by the change should participate in the development of and support policy changes



AMENDED IN ASSEMBLY JULY 5, 2005  
AMENDED IN ASSEMBLY JUNE 22, 2005  
AMENDED IN SENATE MAY 27, 2005  
AMENDED IN SENATE APRIL 19, 2005  
AMENDED IN SENATE MARCH 30, 2005

**SENATE BILL**

**No. 350**

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**Introduced by Senator Machado**  
**(Principal coauthor: Senator Perata)**  
(Principal coauthor: Assembly Member Wolk)  
**(Coauthors: Senators Kuehl and Torlakson)**  
(Coauthor: Assembly Member Pavley)

February 16, 2005

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An act to add Part 12 (commencing with Section 12999.25) to Division 6 of the Water Code, relating to water, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 350, as amended, Machado. San Joaquin River restoration and water management.

(1) Under existing federal law, the federal Bureau of Reclamation operates the Central Valley Project and appropriates water for the beneficial uses of that project pursuant to permits granted by the State Water Resources Control Board and subject to specified state laws.

This bill would establish the San Joaquin River Fund in the State Treasury. The bill would require the Secretary of the Resources Agency, upon appropriation by the Legislature, to make grants available for projects that (A) improve habitat and physical conditions in and along the San Joaquin River to facilitate the restoration of

streamflows and ~~native~~ anadromous fish populations or (B) result in the acquisition of cost-effective replacement water supplies and related actions. *The bill would require the department and the Department of Fish and Game, in coordination, on or before January 1, 2008, to conduct a study to support the restoration of the San Joaquin River and regional water supply reliability in the San Joaquin Valley and to investigate and develop implementation plans for a variety of nonflow-related actions that will increase the likelihood of successful restoration of fish. The bill would require the department and the Department of Fish and Game to submit all strategies or other reports or studies developed or prepared under the bill to the State Water Resources Control Board. The bill would require the state board to consider those strategies, reports, or studies in connection with the issuance, administration, review, monitoring, change, and enforcement of permits and licenses to appropriate water. The bill would authorize the state board to subject those permits and licenses to terms and conditions as it finds necessary to carry out those strategies, reports, or studies.*

(2) Under existing law, various bond acts have been approved by the voters to provide funds for water projects, facilities, and programs. The Costa-Machado Water Act of 2000 authorizes, for the purposes of financing a safe drinking water, water quality, watershed protection, and flood protection program, the issuance of bonds in the amount of \$1,970,000,000, of which \$180,000,000 in the Interim Reliable Water Supply and Water Quality Infrastructure and Management Subaccount, upon appropriation by the Legislature to the Department of Water Resources, is (A) authorized to be expended by the department for grants or loans to local agencies located in the delta export service areas, as defined, for water supply, water supply reliability, or water quality purposes, and (B) required to be used by the department to provide grants for programs or projects located outside the delta that meet any of certain requirements.

This bill would appropriate \$9,160,000 from that subaccount to the department for ~~the purposes of the grant program described in (1) above~~ allocation, as described, for the restoration of the San Joaquin River and regional water supply reliability in the San Joaquin Valley, and for grants for same purposes as the grant program described in (1) above.

Vote: majority. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

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

1     ~~SECTION 1. It is the intent of the Legislature to promote~~  
2     ~~proven, cost-effective water management strategies to ensure~~  
3     ~~that the San Joaquin River and other regional water supplies are~~  
4     ~~managed to provide multiple benefits, including both restoration~~  
5     ~~of the river, improved water quality in the lower San Joaquin~~  
6     ~~River and the Delta, and maintenance of a strong agricultural~~  
7     ~~economy throughout the San Joaquin River watershed.~~

8     ~~SECTION 1. The Legislature finds and declares all of the~~  
9     ~~following:~~

10    ~~(a) The San Joaquin River is one of California's largest rivers~~  
11    ~~and one of two major tributaries to the San Francisco~~  
12    ~~Bay/Sacramento-San Joaquin Delta Estuary, an estuary of~~  
13    ~~international significance and the source of drinking water for~~  
14    ~~more than 22 million Californians. The river is also a vital~~  
15    ~~ecological and recreational resource that once supported one of~~  
16    ~~the largest salmon populations on the Pacific Coast, and~~  
17    ~~contributed substantially to California's commercial and~~  
18    ~~recreational fishing industries.~~

19    ~~(b) The water quality and ecological health of the San Joaquin~~  
20    ~~River are severely degraded, largely due to operations of the~~  
21    ~~federal Central Valley Project (CVP) over the past 50 years,~~  
22    ~~including diversions from Friant Dam, which cause long~~  
23    ~~stretches of the river to dry up in most years and which extirpated~~  
24    ~~the river's historic salmon fishery above the confluence of the~~  
25    ~~Mereed River. These CVP operations have caused or exacerbated~~  
26    ~~chronic water quality and water supply problems in the lower~~  
27    ~~San Joaquin River and delta region, adversely impacting the~~  
28    ~~agricultural economy and communities in that area, as well as the~~  
29    ~~more than 22 million Californians who depend on the delta for~~  
30    ~~their drinking water.~~

31    ~~(c) Improving water quality in the San Joaquin River and~~  
32    ~~restoring flows and ecological health to the river between Friant~~  
33    ~~Dam and the delta will provide broad environmental, water~~  
34    ~~quality, economic, and social benefits to millions of Californians~~  
35    ~~and is in the best interests of the State of California.~~

36    ~~(d) CVP water supply operations, including diversions from~~  
37    ~~the San Joaquin River, also play a significant role in the regional~~  
38    ~~water supply that sustains the agricultural economy of the~~

1 southern San Joaquin Valley. It is the intent of the Legislature to  
 2 promote proven, cost-effective water management strategies to  
 3 ensure that the San Joaquin River and other regional water  
 4 supplies are managed to provide multiple benefits, including both  
 5 restoration of the river and maintenance of a strong agricultural  
 6 economy. Toward that end, this act provides for substantial  
 7 investments in restoration of the river, replacement of water  
 8 supplies, and improved water management strategies to avoid or  
 9 minimize potential adverse effects on Friant Division CVP  
 10 contractors, agricultural communities, and farmworkers in the  
 11 southern San Joaquin Valley.

12 ~~(c) The Legislature acknowledges that pending federal court~~  
 13 ~~litigation will resolve issues relating to the compliance of Friant~~  
 14 ~~Dam operations with certain environmental and fishery~~  
 15 ~~protection laws. This act is not intended to affect that litigation,~~  
 16 ~~or any other litigation. However, funding made available by this~~  
 17 ~~act may be used to support or supplement efforts to implement~~  
 18 ~~any final judgment or settlement in that case or other related~~  
 19 ~~restoration activities consistent with the purposes set forth in this~~  
 20 ~~act.~~

21 SEC. 2. Part 12 (commencing with Section 12999.25) is  
 22 added to Division 6 of the Water Code, to read:

23

24 PART 12. SAN JOAQUIN RIVER RESTORATION AND  
 25 WATER MANAGEMENT

26

27 12999.25. (a) The San Joaquin River Fund is hereby  
 28 established in the State Treasury. There shall be deposited in the  
 29 fund all moneys appropriated to the fund and all income derived  
 30 from the investment of moneys that are in the fund.

31 (b) Money deposited into the fund shall be used for either of  
 32 the following purposes:

33 (1) Restoring waterflows and ecological health to the San  
 34 Joaquin River, *between Friant Dam and the confluence of the*  
 35 *San Joaquin and Merced Rivers.*

36 (2) Developing replacement water supplies and improved  
 37 water management strategies and practices to facilitate  
 38 restoration while avoiding or minimizing potential adverse water  
 39 supply impacts on long-term contractors of the Friant Division of

1 the Central Valley Project and avoiding or minimizing potential  
2 economic impacts on farmworkers.

3 (c) ~~The~~ *Upon completion of the study conducted by the*  
4 *department and the Department of Fish and Game in accordance*  
5 *with Section 12999.27, the Resources Agency shall develop*  
6 *solicitation and evaluation guidelines consistent with the study*  
7 *for the implementation of this part. The agency shall award grant*  
8 *funds on a competitive basis. For the purposes of developing*  
9 *those guidelines, the Resources Agency shall give preference to*  
10 *eligible projects that promote broad collaboration among parties*  
11 *for accomplishing multiple objectives within the San Joaquin*  
12 *River watershed.*

13 (d) The Secretary of the Resources Agency, upon  
14 appropriation by the Legislature, shall make grants available for  
15 projects that meet either of the following requirements:

16 (1) Improve habitat and physical conditions in and along the  
17 San Joaquin River in order to facilitate the ~~expeditious~~  
18 restoration of streamflows and ~~native~~ anadromous fish  
19 populations from Friant Dam to the delta, with associated water  
20 quality benefits for the lower San Joaquin River and the delta.

21 (2) Result in the acquisition of cost-effective replacement  
22 water supplies, and related actions, including water acquisitions  
23 from willing sellers, transfers, and exchanges, to achieve  
24 increased releases of water from Friant Dam for the purposes  
25 described in subdivision (b).

26 (e) Notwithstanding any other provision of this part, a project  
27 involving land fallowing or land retirement shall not be eligible  
28 for grant funds pursuant to this part.

29 (f) The secretary shall manage the fund to ensure that  
30 expenditures for restoration and water supply projects, to the  
31 greatest extent practicable, are equal.

32 (g) The secretary may receive financial contributions on behalf  
33 of the fund from any state, federal, local government, or  
34 nongovernmental entities.

35 (h) Any voter-approved bond funds appropriated to the fund  
36 shall be expended in a manner that is consistent with voter intent  
37 for the expenditure of those funds.

38 (i) This part shall not be construed to affect the resolution of  
39 any pending legal issue in any litigation involving San Joaquin  
40 River restoration.

1 (j) (1) ~~This part shall not be implemented so as to affect the~~  
2 ~~resolution of any pending legal issue in any litigation involving~~  
3 ~~San Joaquin River restoration.~~

4 (2) ~~This part may be implemented to support or supplement~~  
5 ~~efforts to implement any final judgment or settlement in any~~  
6 ~~litigation involving San Joaquin River restoration, consistent~~  
7 ~~with the purposes of this part.~~

8 SEC. 3. (a) ~~The sum of nine million one hundred sixty~~  
9 ~~thousand dollars (\$9,160,000) is hereby appropriated from the~~  
10 ~~Interim Reliable Water Supply and Water Quality Infrastructure~~  
11 ~~and Management Subaccount, established by Section 79205.4 of~~  
12 ~~the Water Code, within the Safe Drinking Water, Clean Water,~~  
13 ~~Watershed Protection, and Flood Protection Bond Fund, to the~~  
14 ~~Department of Water Resources for the provision of grants for~~  
15 ~~purposes of Part 12 (commencing with Section 12999.25) of~~  
16 ~~Division 6 of the Water Code.~~

17 (b) ~~The Department of Water Resources may only allocate~~  
18 ~~funds pursuant to subdivision (a) if it determines that the~~  
19 ~~allocation meets the requirements set forth in Article 4~~  
20 ~~(commencing with Section 79205.2) of Chapter 9 of Division 26~~  
21 ~~of the Water Code.~~

22 *12999.27. (a) The department and the Department of Fish and*  
23 *Game shall, in coordination, conduct a study to support the*  
24 *restoration of the San Joaquin River and regional water supply*  
25 *reliability in the San Joaquin Valley. The department and the*  
26 *Department of Fish and Game shall investigate and develop*  
27 *implementation plans for a variety of nonflow-related actions*  
28 *that will increase the likelihood of successful restoration of fish,*  
29 *including, but not limited to, anadromous fish, on the San*  
30 *Joaquin River between Friant Dam and the confluence of the San*  
31 *Joaquin and Merced rivers.*

32 *(b) The study may include restoration data and information*  
33 *from studies conducted to date.*

34 *(c) In preparing the study, the department and the Department*  
35 *of Fish and Game may collaborate with interested public parties*  
36 *and stakeholders.*

37 *(d) The study shall be completed no later than January 1,*  
38 *2008, and shall be made available to the public.*



1 (e) The department and the Department of Fish and Game  
2 may each employ two personnel, through the 2007-08 fiscal year,  
3 to complete the study.

4 12999.29. (a) The Department of Water Resources and the  
5 Department of Fish and Game shall submit all strategies or other  
6 reports or studies prepared under this part to the State Water  
7 Resources Control Board. The State Water Resources Control  
8 Board shall consider those strategies, reports, or studies in  
9 connection with the issuance, administration, review, monitoring,  
10 change, and enforcement of permits and licenses to appropriate  
11 water. The State Water Resources Control Board may subject  
12 those permits and licenses to terms and conditions it finds  
13 necessary to carry out those strategies, reports, or studies.

14 (b) It is the intent of the Legislature that the appropriation and  
15 authority provided in this part represent an exercise of the State  
16 of California's sovereign authority to regulate water rights,  
17 water resources, and public trust responsibilities. While a state  
18 agency may consult with a federal agency, any state activity  
19 funded under this section shall not be construed as cooperation  
20 with any federal agency required for the development of the  
21 comprehensive plan to address fish, wildlife, and habitat  
22 concerns on the San Joaquin River, pursuant to Section 3406(c)  
23 of the federal Central Valley Project Improvement Act (Public  
24 Law 102-575, Title 34).

25 (c) Nothing in this section is intended to alter, amend, or  
26 otherwise change the obligation of the United States to operate  
27 the Central Valley Project to meet all obligations of state law,  
28 including, but not limited to, all decisions and orders of the State  
29 Water Resources Control Board and the requirements of Section  
30 2 of Article X of the California Constitution and the public trust  
31 doctrine.

32 SEC. 3. (a) The sum of nine million one hundred sixty  
33 thousand dollars (\$9,160,000) is hereby appropriated from the  
34 Interim Reliable Water Supply and Water Quality Infrastructure  
35 and Management Subaccount, established by Section 79205.4 of  
36 the Water Code, within the Safe Drinking Water, Clean Water,  
37 Watershed Protection, and Flood Protection Bond Fund, to the  
38 Department of Water Resources for allocation as follows:

1     *(1) (A) Two million five hundred thousand dollars*  
2     *(\$2,500,000) to support restoration of the San Joaquin River and*  
3     *regional water supply reliability in the San Joaquin Valley.*  
4     *(B) Of the money appropriated by this paragraph, seven*  
5     *hundred eighty thousand dollars (\$780,000) is hereby authorized*  
6     *for reimbursement from the Department of Water Resources to*  
7     *the Department of Fish and Game for the purposes described in*  
8     *paragraph (1).*  
9     *(2) Six million six hundred sixty thousand dollars (\$6,660,000)*  
10    *for the provision of grants in accordance with Part 12*  
11    *(commencing with Section 12999.25) of Division 6 of the Water*  
12    *Code.*  
13    *(b) It is the intent of the Legislature that funds to be allocated*  
14    *in accordance with paragraph (2) of subdivision (a) not be spent*  
15    *until the study described in 12999.27 of the Water Code is*  
16    *completed.*  
17    *(c) The Department of Water Resources may allocate funds*  
18    *pursuant to paragraph (1) of subdivision (a) only if it determines*  
19    *that the allocation meets the requirements set forth in Article 4*  
20    *(commencing with Section 79205.2) of Chapter 9 of Division 26*  
21    *of the Water Code.*