

- **Board of Directors**
Communications and Legislation Committee

March 11, 2008 Board Meeting

8-10

Subject

Oppose SB 27 (Simitian, D-Palo Alto) regarding the “Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement Act of 2008” and proposed Delta Water and Land Use Authority

Description

In April 2007, Metropolitan’s Board adopted a “support and seek amendments” position on a prior version of Senator Simitian’s measure, SB 27. At that time, the bill stated legislative intent to implement a program for sustainable management of the Delta based on the Delta Vision Blue Ribbon Task Force final report, and directed the Secretary of the Resources Agency to develop and implement a number of immediate actions in the Delta. Senator Simitian recently submitted amendment language ([Attachment 1](#)) to Legislative Counsel that will completely rewrite the bill. While the proposed amendment, in part, directs the construction and operation of new conveyance facilities to move water from the Sacramento River to the water project export facilities, it also imposes substantial restrictions on its operation, limits the use of exported water and imposes costs not related to construction, operation or mitigation of the new facilities. The facility would be controlled by a new multi-purpose entity that also would have significant, but ill-defined environmental regulatory authority in the Delta that it would be required to balance with operation of the facility. The new entity would be funded in part by a \$50 per acre-foot surcharge on all water exported by Metropolitan and other export contractors, on top of the legitimate charges to repay costs of construction, maintenance and operation of the facility.

For these reasons, as discussed in more detail below, staff recommends that the Board oppose the proposed amendments to SB 27.

Construction of the New Conveyance Facility

A new “Delta Water and Land Use Authority” (Authority) would be created and directed to construct, own and operate a facility to move water from the Sacramento River to the State Water Project (SWP) and Central Valley Project (CVP) in the South Delta. The facility design would take into consideration the recommendations of the Governor’s Blue Ribbon Task Force and the program developed in the Bay-Delta Conservation Plan process. It would be required to meet a number of criteria, including, reducing the impact of project operations on native fish, allowing for Delta habitat improvements, increasing reliability of deliveries of SWP and CVP water and improving the quality of SWP and CVP deliveries from the Delta. The Authority would be directed to enter into a contract with a joint powers agency comprised of export contractors for the design, operation and maintenance of the facility. The Authority would be authorized to issue revenue bonds for the construction of the facility and to charge water contractors for repayment of the bonds.

Construction of a new facility as described in the proposed amendments, including environmental mitigation and repayment by contractors, would be consistent with Metropolitan’s board-adopted policy for a long term Delta plan. Creation of a new entity to construct and operate the facility also would be consistent with that policy, so long as its duties and obligations are appropriate to the operation of public infrastructure. However, the conflicting duties of the proposed Authority, restrictions on supply benefits and inappropriate costs contained in the bill would eviscerate the benefits of the conveyance facility.

No Expertise or Knowledge Required for Authority Board

The Authority Board would be made up of seven political appointees, none of which would be required to have any experience or knowledge in managing a public utility, let alone water supply. Such a board likely would not have the expertise and knowledge necessary to operate the important public infrastructure being proposed in the bill or the many other responsibilities proposed. Moreover, minimal thought is given to how the Authority would retain the large, experienced staff that would be required to carry out the duties proposed.

Overly Broad and Ill-Defined Authority Responsibility

The Authority would be given potentially immense and vague authority over issues already within other state and federal agencies' jurisdiction. Along with assuming the Department of Water Resources' authority to construct and operate new conveyance facilities, the Authority would be assigned other duties that would lead to a conflicting regulatory regime in the Delta and create internal conflicts within the Authority, blurring its focus as a public utility. A better approach would be for the bill to create the entity that focuses on operating the conveyance facility efficiently to deliver the service it is intended to provide, consistent with all environmental protection and restoration requirements adopted by existing regulatory entities.

Instead, the Authority is given the authority to develop a wide range of policies, regulatory programs and strategies, all of which are laudable, but which already are done by existing agencies or would be better done by an entity/entities created for those express purposes. These include:

- Replacing the California Bay-Delta Authority to carry out the CALFED program
- Rejecting conveyance facility design, construction and operation decisions
- Managing and balancing reasonable use with the public interest in the Delta
- Protecting threatened and endangered species
- Restoring the Delta environment and other Delta infrastructure
- Requiring "significantly" higher water use efficiency by export M & I users
- Discouraging "inappropriate" urbanization in the Delta and avoiding the risk of flooding
- Investment strategies for levees, floodplain management, water circulation and quality and reduction of global warming gases
- Approving development decisions by the existing Delta Protection Commission

Unacceptable and Inequitable Restrictions on Use of SWP Supplies

The SWP contractors are prepared to pay billions of dollars to construct, operate and maintain the conveyance facility. The costs will include costs to mitigate any environmental and other impacts caused by construction and use of the facilities. Indeed, a primary benefit of the conveyance facility will be to improve conditions of aquatic species in the Delta and enhance opportunities to restore habitat in the Delta to restore listed species. Moreover, the facility will be required to comply with all regulatory obligations and responsibilities. Nevertheless, the bill proposes significant new restrictions that would seriously limit the benefits to the contractors.

For example, in order to use the facility, export urban users would be required to reduce per capita use by 10 percent in 2015 and 25 percent by 2030 compared to essentially current use (2000-2007 average). This requirement is wrong for multiple reasons. Current use as a baseline fails to account for the hundreds of millions dollars invested in, and the substantial existing reductions in use resulting from, the significant water management and conservation actions taken in Southern California over the last quarter of a century. It also discriminates against one group of users—urban export contractors—but requires no reduction in use by urban users in other parts of the state or by any agricultural users. Finally, we do not believe it has been demonstrated that an arbitrary additional 25 percent reduction in export urban use is "economically efficient," reasonable or in the public interest.

In addition, the bill will require that prior to operation of the new facility, State Water Resources Control Board (SWRCB) must adopt standards and flow requirements "sufficient to protect and restore sustainable levels of" native fish in the Delta. Operation of the export projects is just one of a number of factors impacting native fish and operational requirements on the projects alone cannot "protect and restore" native fish. In order to meet this

requirement SWRCB would be required to impose limits on the projects well beyond their responsibilities and which still would not meet the goal. SWRCB already is required to impose terms and conditions on the projects' water rights to "conserve and utilize in the public interest the water" being used, including streamflow requirements to protect fish. California Department of Fish and Game (DFG), United States Fish and Wildlife Service (USFWS) and United States Marine Fishery Service (USMFS) also have exercised their statutory authority to require the projects to avoid taking and jeopardizing listed species, as well as the courts. The proposed additional requirement likely would severely restrict the supply benefits of the projects and would be duplicative and/or inconsistent with the statutory authority of the existing agencies.

Fees on Facility Users Unrelated to Benefits Received or Impacts Caused

Under existing law, in order to construct and use the conveyance facilities, SWP and CVP contractors will be required to mitigate, at their cost, impacts on the environment. Yet the bill proposes to charge the contractors an additional \$50 per acre-foot environmental fee (inflated each year based on the consumer price index) on exported water not related to any environmental impacts or any benefits received. That fee will go to fund numerous activities that are completely unrelated to construction or operation of the facilities. These include reduction of contaminant loading; conservation of lowlands grasslands; reduction of climate change gases from Delta islands and farms; wildlife-friendly agriculture Mokelumne and Cosumnes River floodplains; and replacement of a railroad causeway across the Yolo Bypass. The Authority also is given the authority, but is not required, to charge agencies that divert upstream of the Delta a much smaller \$5 per acre-foot fee. Even that discretionary fee may not be charged to agencies that already are required to pay environmental mitigation fees; this credit for existing mitigation costs is not extended to export contractors.

The bill also requires the Authority to include in the fees to the contractors *all* of its expenses and any costs imposed on it by local, state and federal agencies or the courts. With respect to costs incurred in constructing and operating the conveyance facilities it is appropriate those who use the facilities pay. However, the Authority's proposed duties described above go well beyond operation of the conveyance facilities. The Authority's costs not related to construction, operation and maintenance of the conveyance facilities, but which are incurred in exercising its other proposed duties, should not be charged to the export contractors.

Perpetual Limitations on Export Uses and Imposition of Inappropriate Costs

As a condition to the bill becoming operative, a proposed Constitutional Amendment is proposed that would lock in the water supply limitations and inappropriate costs unless 75 percent of the voters statewide agree to a change. This super-majority vote requirement will allow a 25 percent minority to restrict water available to half the state no matter what their legitimate need for water is or whether any actual benefit is provided by the limitation.

Policy

By Minute Item 45753, dated May 11, 2004, and Minute Item 46637, dated April 11, 2006, the Board adopted a set of Delta policy principles to ensure a solid foundation for development of future Metropolitan positions and to provide guidance to Metropolitan staff.

By Minute Item 47135, dated May 25, 2007, the Board supported, in principle, the proposed Delta Action Plan, as set forth in the letter signed by the General Manager.

By Minute Item 47232, dated September 11, 2007, the Board adopted the conveyance criteria for implementation of Long-Term Delta Plan.

California Environmental Quality Act (CEQA)

CEQA determination for Options #1 and #2:

The proposed action is not defined as a project under CEQA because the proposed action involves continuing administrative activities such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #3:

None required

Board Options

Option #1

Adopt the CEQA determination and authorize the General Manager to express Metropolitan’s opposition to SB 27.

Fiscal Impact: None

Business Analysis: None

Option #2

Continue the Board’s current position of supporting SB 27 and authorize the General Manager to seek amendments.

Fiscal Impact: None

Business Analysis: None

Option #3

Take no position on SB 27.

Fiscal Impact: None

Business Analysis: None

Staff Recommendation

Option #1



Linda Waade
Deputy General Manager, External Affairs

3/4/2008

Date



Jeffrey Nightlinger
General Manager

3/4/2008

Date

Attachment 1 – Proposed Amendments to Senate Bill 27

DRAFT

SENATE BILL No. 27

SECTION 1. Division 26.6 (commencing with Section 79600) is added to the Water Code, to read:

DIVISION 26.6. SACRAMENTO-SAN JOAQUIN RIVER DELTA, CLEAN DRINKING WATER, WATER SUPPLY SECURITY, AND ENVIRONMENTAL IMPROVEMENT ACT OF 2008

Chapter 1. General Provisions

79600. This division shall be known, and may be cited, as the Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement Act of 2008.

79601. The Legislature finds and declares all of the following:

(a) The Sacramento-San Joaquin River Delta is a web of channels and reclaimed islands at the confluence of the Sacramento and San Joaquin Rivers. It forms the eastern portion of the wider San Francisco Estuary, which includes the San Francisco, San Pablo, and Suisun Bays. The delta collects water from California's largest watershed, which encompasses roughly 45 percent of the state's surface area and stretches from the eastern slopes of the coastal ranges to the western slopes of the Sierra Nevada.

(b) Levees built 100 years ago confined water to channels and transformed the Delta from marshland into dry "islands" of land available for human use. In the 837,594 acres in the Delta and Suisun Marsh, levees confine water to 10 percent of the total area, with agricultural uses in 557,896 acres.

(c) The delta supports a unique and irreplaceable combination of environmental and economic values, including all of the following:

(1) The San Francisco Bay-Delta is a unique ecosystem. The delta and the adjacent Suisun Marsh, an integral part of the delta ecosystem, provide habitat for 700 species, including 12 species listed under either the California or federal endangered species acts. Eighty percent of the state's commercial fishery species live in or migrate through the delta. It is a major stopping point for hundreds of thousands of migrating birds along the Pacific Flyway. The Suisun Marsh alone contains more than 10 percent of California's remaining wetlands.

(2) Water supply. Two-thirds of the state's population relies on the delta for part or all of their drinking water. Water exported from the delta irrigates 45 percent of the fruits and vegetables produced in the United States; one-sixth of all irrigated lands in the nation are located in this watershed.

DRAFT

(3) Agricultural and other land uses. Delta lands have contributed significantly to the agricultural economy in California. Supporting a population of about 470,000, the cities, towns, and settlements within the delta are of significant historical, cultural, and economic value.

(4) Major transportation corridors. The delta is crossed by three state highways, three rail lines, and two deepwater channels and is home to two inland ports. Most of these transportation corridors serve other areas of the state.

(5) Utility corridors. The delta is crossed by hundreds of gas lines, five high voltage lines, and critical water supply aqueducts that serve public health and safety needs and cross multiple Delta islands. – The delta is also home to numerous underground natural gas storage sites.

(6) Recreation. The delta's 635 miles of boating waterways are served by 138 marinas containing 11,700 in water boat slips and dry storage for 5,500 boats. In 2000, there were an estimated 6.4 million boating-related visitor days, with 2.13 million boating trips. Other major recreational activities in the delta include fishing, waterfowl, and upland game bird hunting, wildlife viewing, bird watching, and windsurfing.

(7) Flood management. The delta is the natural drain to a 42,500 square mile watershed that includes the Central Valley and the western slope of the Sierra Nevada from Fresno to Mount Shasta. As such, it is the main conduit for floodwaters to flow out to the ocean. The delta itself is protected by extensive, but fragile, flood management facilities, including about 1,100 miles of levees in the delta and about 230 miles of levees in the Suisun Marsh. These levees protect about 65 islands and tracts in the delta. Most of these levee-protected lands are below sea level, some areas are as much as 25 feet below sea level.

(d) The delta cannot sustain important environmental and economic values under current conditions. All of these values either are already in significant decline or are at risk of sudden failure. Several factors are intensifying the problems, including all of the following:

(1) Land subsidence, sea level rise, and changes in climate make Delta levees increasingly vulnerable to failure from earthquakes, floods, and other causes. Over the next 50 years, there is a two-thirds chance of a catastrophic levee failure in the delta, leading to flooding of multiple islands and the intrusion of seawater. For one such scenario, the Department of Water Resources estimates that a large earthquake near the delta would cause major interruptions in water supplies for Southern California, the San Joaquin Valley, and the San Francisco Bay area, as well as disruptions of power, road, and shipping lines, costing the state's economy as much as \$40 billion. These failures also would create major environmental disruptions and local flooding risks.

(2) Endangered species and fisheries have continued to decline in the Delta and disruptive nonnative species continue to invade. In the fall of 2004, routine fish surveys registered sharp declines in the numbers of several open-water (pelagic) species, including the delta smelt, already listed as threatened under the federal and state endangered species acts. Subsequent surveys have confirmed the trend, raising concerns that the smelt, which are sometimes seen as

DRAFT

an indicator of ecosystem health in the delta, risks extinction if a solution is not found quickly. In the winter of 2008, salmon populations reliant on the Delta declined precipitously.

(3) Delta water quality remains at risk from salts entering from the ocean and the Central Valley's agricultural drainage, as well as from pesticides and metals coming from agricultural and urban lands. Chronic toxicants continue to be a problem, and episodic toxic events from urban and agricultural applications are also a major problem.

(4) Regional population and economic growth have increased pressure to urbanize delta lands near major transportation routes and urban centers. This "hardening" of delta lands simultaneously raises the costs of flood risks and reduces the flexibility of land management options. Unlike most other activities in the delta, urbanization is generally irreversible. Additionally, urbanization is self-accelerating. Urbanization in one location significantly increases the value of adjacent lands. This, coupled with declining profit margins for farming, will increase the pressure to convert farmlands to subdivisions. This shift will come at the expense of habitat protection and other services, such as water quality and water supply that are important for other parts of California.

(e) The Delta Vision Task force found that new facilities for conveyance and storage, and better linkage between the two, should be developed to better manage California's water resources for both the estuary and exports.

79602. It is the intent of the Legislature to begin implementing a program for sustainable management of the Delta. By enacting this measure, the Legislature intends to:

(a) Implement the recommendations contained in the "Delta Vision Blue Ribbon Task Force created by Executive Order S-17-06 directing that entity to "develop a durable vision for sustainable management of the Delta" with the goal of "managing the Delta over the long term to restore and maintain identified functions and values that are determined to be important to the environmental quality of the Delta and the economic and social well being of the people of the state."

(b) Develop policies to manage the Delta that balance equally public trust values and the reasonable use of the state's limited water resources.

(c) Complete environmental evaluation of the preferred alternatives identified by the Bay Delta Conservation Plan and construct the facilities authorized by this act as soon as is feasible.

(d) Develop short and intermediate strategies to protect endangered species endemic to the Delta while the longer-term preferred alternative is under review and being implemented.

(e) Develop short and intermediate actions to protect the drinking, industrial, and farm agricultural water supplies, including critical water supply aqueducts that serve public health and safety needs and cross multiple Delta islands, while the longer-term preferred alternative is under review and being implemented.

DRAFT

(f) Develop a program designed to restore the Delta's environment and protect the state's water conveyance capabilities and infrastructure within the Delta.

(g) Develop a program that is guided by the principal that the land and waterways of the Delta are an integral part of a healthy estuary. The goal of actions and decisions for the Delta by relevant Government entities shall be to preserve and enhance native species by creating a more heterogeneous estuarine environment, including a diverse habitat mosaic, expanded areas of seasonal and tidal wetlands, effective connections between the estuary and the larger landscape and freshwater flows of the right temperatures at the right times. The physical geography of the Delta and patterns of food production, nutrient distribution, subsidence reversal, migration, water flow, and salinity must support ecosystem functions and processes characteristic of a productive estuary.

(h) Develop programs recognizing that California's water supply is limited and must be managed with significantly higher efficiency to be adequate to meet the needs of future populations, a growing economy, and a sustainable environment.

(i) Invest limited financial resources in greater conservation, increased regional self-sufficiency in water supplies, more conjunctive use of groundwater, integrated water system management and demand management, and new technologies.

(j) Encourage equitable access to higher quality water sources and seek to reduce conflict among water users for diversion from the highest water quality locations.

(k) Make water conservation the first priority underlying government decisions and expenditures regarding water originating within the Delta watershed and encourage all areas of California to develop policies relying on increased regional self-sufficiency.

(l) Ensure that investments of public funds pursuant to this act result in public benefits.

(m) Encourage regulatory agencies to respond expeditiously to requests for review of project documents and permit applications by the Authority.

79603. Unless the context requires otherwise, the definitions set forth in this section govern the construction of this division:

(a) "Acquisition" means the acquisition of a fee interest or any other interest, including easements, leases, and development rights.

(b) "Authority" means the Delta Water and Land Use Authority established by Section 79604.

(c) "Bay area counties" means those counties that are members of the Association of Bay Area Governments.

(d) "Bay-delta" means the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

DRAFT

(e) “Bay Delta Conservation Plan” means any Natural Communities Conservation Plan or Habitat Conservation Plan being developed by the Resources Agency through a consortium of public agencies and nonprofit organizations to protect and restore endangered and threatened species and their habitat in the Delta.

(f) “Board” means the State Water Resources Control Board.

(g) “CALFED” means the consortium of state and federal agencies with management and regulatory responsibilities in the bay-delta estuary.

(h) “CALFED Bay-Delta Program” means the undertaking by CALFED to develop and implement, by means of the final programmatic environmental impact statement/environmental impact report, the preferred programs, actions, projects, and related activities that will provide solutions to identified problem areas related to the bay-delta estuary ecosystem, including, but not limited to, the bay-delta and its tributary watersheds.

(i) “Delta” means the area of the Sacramento-San Joaquin Delta as defined in Section 12220.

(j) “Department” means the Department of Water Resources.

(k) “Facility” means intake facilities and related facilities necessary to implement the facility, as described in Chapter 3.

(l) “Fund” means the Clean Drinking Water, Water Quality Improvement, and Environmental Enhancement Fund created by Section 79670.

(m) “Nonprofit organization” means any nonprofit corporation formed pursuant to the Nonprofit Public Benefit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code) and qualified under Section 501 (c)(3) of the United States Internal Revenue Code.

(n) “Public water agency” means any public entity, as defined in Section 514, that provides water service, as defined in Section 515.

Chapter 2: Delta Water and Land Use Authority

79604. There is hereby created in State Government, The Delta Water and Land Use Authority.

79605. The board of directors of the Authority shall consist of seven members, 5 appointed by the Governor and confirmed by the Senate, one appointed by the Senate Rules Committee and one appointed by the Speaker of the Assembly. (a) The initial term of office of each member of the Board shall be 2, 4, or 6 years as specified in this section and all subsequent terms shall be for 8 years. No member of the Board shall serve 2 consecutive terms, but may be reappointed to the Board after a period of two years after the end of her or his term.

DRAFT

(b) At the first meeting of the Board, the members shall classify themselves by lot into three classes. One class shall have three members and the other two classes shall have two members each. For the class that has three members, the terms of office shall be 2 years. The second class constituting 2 members shall serve four years. The third class, consisting of two members shall serve 6 years. Thereafter, the terms of all succeeding members shall be 8 years. Notwithstanding subdivision (d), all initial board members may serve 2 consecutive terms.

(c) Any vacancy shall be filled by the appointing authority within 60 days. If the term of a board member expires, and no successor is appointed within the allotted time frame, the existing member may serve 180 days beyond the expiration of their term.

(d) The Governor shall appoint a Chair from among the board members, who shall serve for not more than four years.

(e) The Authority shall meet once a month in a public forum. At least 2 meetings each year shall take place within the Delta.

(f) The directors of the US Bureau of Reclamation, the US Fish and Wildlife Service, National Marine Fisheries Service, US Geological Service, Department of Water Resources, and Department of Fish and Game shall be non-voting ex-officio members of the Board of Directors.

79606. The Chair shall be full-time. Other members shall serve one third-time. The board of directors may select a vice chairperson and other officers determined to be necessary.

79607. Salary shall be set at the same levels as the California Air Resources Board.

(b) The members of the board of directors shall be reimbursed for expenses necessarily incurred in the performance of official duties.

(c) The board of directors shall appoint an executive director who shall serve full time.

(d) The Authority shall hire employees necessary to carry out the functions of the agency.

(e) The number of employees needed and qualifications of those employees shall be determined by the Authority, subject to the availability of funds.

(f) The salary of each agency employee shall be determined by the State Personnel Board, and shall reflect the duties and responsibilities of the position.

(g) All persons employed by the agency are state employees, subject to the duties, responsibilities, limitations, and benefits thereof.

79608. The headquarters of the agency shall be located in Sacramento.

Chapter 3. Mission, Duties, and Responsibilities of The Delta Water and Land Use Authority

DRAFT

79609. The authority shall do all of the following:

(a) Have as primary co-equal goals, the preservation of the native species of the Delta ecosystem, and the delivery of a reliable water supply. In adopting programs to achieve these co-equal goals, the authority shall balance the legal concepts of reasonable use of the waters flowing into the Delta, and maintenance of the public trust values of the Delta and its waters. For the purposes of this subsection, "delivery of a reliable water supply" includes assisting in meeting delta water quality standards established by the State Water Resources Control Board.

(b) Adopt capital investment strategies that strengthen selected levees, improve floodplain management, and improve water circulation and quality. Such strategies shall address the protection of critical water supply aqueducts that serve public health and safety needs and cross multiple Delta islands. In adopting land use decisions in the Delta, first priority shall be given to strategies which restore the level of Delta lands to above sea level, and which reduce the emission of global warming gases from the Delta.

1) The Authority shall develop goals for minimum flow levels for streams tributary to the Delta consistent with achieving ecological benchmarks including doubling of specified fish populations in designated time-frames.

(A) The Authority shall consult with the United States Fish and Wildlife Service and where applicable adopt stream restoration guidelines for fisheries developed within the anadromous fish restoration program.

(B) The Authority shall in addition utilize as guidelines for ecosystem restoration those developed by the Cal-Fed ecosystem restoration program.

2) The Authority and the Delta Watershed Conservancy are authorized to buy, sell, hold, and transfer water rights for both environmental and water supply purposes. Such water rights shall be used to meet water supply and fisheries restoration goals, and shall only be acquired from willing sellers with the approval of the Board.

3) The rights and powers granted herein are for the express purpose of providing a design and setting priorities for water purchases from willing sellers and meeting fisheries restoration goals, and do not contradict, conflict with or supersede any existing water rights, statutes, and/or adjudications.

(c) Adopt policies discouraging inappropriate urbanization of the Delta to maximize public safety and protect critical infrastructure of statewide significance.

(d) Adopt Delta land use policies which minimize the risk of flooding of vital infrastructure, and urbanization of the Delta.

(e) Adopt policies for the Delta that are designed for resiliency and adaptive management of the terrestrial and aquatic habitat.

DRAFT

(1) These policies shall include specific benchmarks and timelines for habitat purchase that shall guide decisions by the Delta Watershed Conservancy, and land use decisions taken by the Delta Protection Commission.

(2) In determining whether to adopt decisions made by the Delta Watershed Conservancy and the Delta Protection Commission, the Authority must determine that those decisions are consistent with and do not conflict with the habitat restoration goals herein established.

(f) Adopt policies designed to bring about immediate improvements to the existing through-Delta export system, while the preferred long-term option is being designed and is undergoing environmental review.

(g) Adopt benchmarks for assessing progress toward critical goals drawing on contributions from scientists, state and Federal agency program managers, and knowledgeable members of the public.

1) Fishery restoration goals shall include, as a minimum, those established by The Anadromous Fish Restoration Program of the United States Fish and Wildlife Service,

(h) Mitigate to the extent feasible, adverse impacts to native fish that may result from actions taken pursuant to this division.

79610 (a) The Authority is authorized to contract to design, construct and own a facility or facilities to move water from the Sacramento River to the Harvey Banks Pumping Plant of the State Water Resources Development System, and the Tracy Pumping Plant of the Bureau of Reclamation Central Valley Project.

(b) The Authority shall be the lead agency for conducting environmental studies pursuant to the California Environmental Quality Act and the State lead agency for purposes of the National Environmental Protection Act. The Authority shall be the successor as lead agency to scoping and draft environmental documents contracted for by the Department of Water Resources and the California Resources Agency prior to the date the Authority becomes operational.

(c) The Authority shall conduct an environmental review of the preferred alternative or alternatives adopted in the Bay Delta Conservation Plan. Alternatives considered shall include at least:

(1) A dual conveyance option that includes an isolated conveyance facility combined with an improved through-Delta mechanism; and

(2) A stand-alone isolated facility, if the Authority determines that moving water from the Sacramento River to the pumps through the Delta is significantly threatened by seismic activity, flooding, ocean rise, or other human or natural causes.

DRAFT

(3) A no-project alternative analysis consistent with the California Environmental Quality Act and the National Environmental Protection Act

(d) The facility shall be designed to convey water for the State Water Project, the Central Valley Project, and local water agencies that can reasonably be served from the facility. The design of the facility shall take into consideration the recommendations of the Blue Ribbon Talk Force established by Executive Order S-16-06 and the final program developed pursuant to the October 6, 2006, Planning Agreement for the Bay-Delta Conservation Plan, as well as designs and mitigations identified in the EIR/EIS resulting from paragraph (c).

(1) The Authority shall not construct facilities to convey water for a water agency unless the Authority has entered into a contract for repayment of the Authority's costs in accordance with this division.

(2) The Authority may contract with any public agency to transport water through the facilities, subject to the requirements of this division.

(3) The design, construction and operation of the facility shall meet the following criteria:

(A) Allow the State Water Project and Central Valley Project, if the Central Valley Project wishes to participate, to reliably deliver water to export contractors.

(B) Reduce impacts to native fish caused by the operation of the export pumps and improve the operational flexibility and ability of the State Water Project and the Central Valley Project to provide ecosystem and water supply benefits.

(C) Provide conditions that will allow for habitat improvements for fish and wildlife in the Delta, the recovery of listed species and sustainable ecosystem functions.

(D) Provide improved water supply reliability and conveyance for the State Water Project and the Central Valley Project and for water transfer.

(E) Reduce the quantity of bromide, total organic carbon, and total dissolved solids in the water pumped at state and federal water pumping facilities and local agencies to protect the public health and improve the ability to manage salinity concentrations in water exported.

(F) Increase the flexibility to manage uncertainties associated with climate change and future fishery needs.

(G) Promote ecosystem restoration of the Delta.

(H) Facilitate wet-year water storage for use in dry years.

DRAFT

(e) The authority shall have all the powers, duties, and obligations of the Department of Water Resources with respect to finance, design, construction, ownership and operation of the facilities.

(f) The Facility shall be operated consistent with, and nothing in this bill shall affect the application of, Sections 10505, 10505.5, 11128, 11460 to 11463, inclusive, or 12000 to 12220, inclusive.

(g) Construction and operation of the Facility shall be subject to, and the Authority shall comply with, all applicable state and federal environmental laws and regulations and the terms and conditions of any applicable water rights permits and licenses.

(h) The Authority shall enter into a contract with a joint powers agency made up of the water agencies using the facility, including, if they wish to enter into such a contract, the United States or its water contractors, for design, operation, maintenance and repair of the facility. The Authority shall approve or reject proposed operations of the Joint Powers Authority and make written findings with regard to such operations.

(1) The contract shall:

(A) Provide for an appropriate allocation of costs attributable to the use of the Delta Conveyance Facilities to deliver water to the State Water Resources Development System, Central Valley Project, and other water users, including a pro rata share of capital, operation maintenance and replacement regulatory, and environmental costs.

(B) Allocate capacity in and priority to use the Delta Conveyance Facilities. The allocation shall be consistent with the contracts for delivery of State Water Project and water delivered by the Bureau of Reclamation.

(C) Contain such other terms and conditions as the Authority deems necessary or appropriate.

(D) Provide for the replacement of components of the facility as necessary and shall otherwise be performed in a manner ensuring that the facility is kept in good condition and protected to ensure its long-term operation.

(E) The Authority shall be fully responsible for all contracted work, including its quality and timeliness. The Authority shall provide those taking water from the facility with documentation that evidences substantial compliance with those provisions.

79612. (a) The Authority shall take all necessary or appropriate actions to expeditiously obtain permits and other approvals for, and commence operation of, the facility, including coordinating and cooperating with all state or federal regulatory agencies.

(b) Any state agency with regulatory or approval authority with respect to construction, implementation or operation of the Facility shall take all actions necessary or appropriate to

DRAFT

process and make any required determinations on permits or approvals as expeditiously as possible.

79614. All of the Authority's costs associated with the ordinary operations, maintenance and replacement of the facility shall be charged pursuant to Section 79622. The portion of the costs so charged and paid attributable to deliveries to State Water Project contractors shall be considered a transportation cost billable to the State Water Project contractors pursuant to the provision of each contractor's long term water supply contract.

79616. (a) The facilities constructed pursuant to Section 79610 shall not adversely impact, the intake facility jointly operated by the County of Sacramento and East Bay Municipal Utility District.

(b) If changes are required to be made to the Elk Grove plant of the Sacramento Regional County Sanitation District because of the operation of the facilities constructed pursuant to this act, the costs shall be included as costs of the facilities and shall not be the responsibility of that district. Nothing in this act shall prohibit any regulatory agency from requiring changes to the plant or any other District facility which is required by law.

79618. Prior to operation of the facility and periodically thereafter, pursuant to their existing authority, the Board shall adopt water quality standards and water rights terms and conditions which require Delta outflows and water quality sufficient to protect and restore to sustainable levels fisheries native to the Delta and San Francisco Bay. To the extent feasible, water quality standards and water rights shall include flexibility to allow adaptive management.

79619. (a) Nothing in this Division shall impact existing area of origin or county of origin protections.

(b) Section 5937 of the Fish and Game code applies to all waters tributary to the Delta.

(c) The public trust doctrine applies to all waters tributary to the Delta.

(d) Nothing in this division amends the California Endangered Species Act or the California Environmental Quality Act.

(e) This section is declaratory of existing law.

79619.5(a) All the State of California powers and duties of CalFed and the CalFed program are transferred to the authority, and the authority shall have all the powers of CalFed in addition to the powers and duties conferred by this Division.

(1) Upon swearing in of the first Board of the Authority, chapter 812 of 2002, which created the California Bay Delta Authority Act is hereby repealed and its powers and responsibilities transferred to the Authority.

DRAFT

79620. (a) Before a public water agency may enter into a contract with the Authority for water conveyance by means of the facility, the public water agency, and its contractors and subcontractors as applicable, shall submit to the Authority a plan approved by the State Water Resources Control Board for reducing the per capita use of municipal and industrial water by the public water agency and any municipal and industrial water contractors of the public water agency, by 10 percent by 2015 and 25 percent by 2030 as compared to their average water use in the period 2000-2007 by means of increased water efficiency, improved groundwater management, recycling, and the use of other local water supplies.

(b) Before a public water agency may enter into a contract with the Authority for water conveyance by means of the facility, the public water agency, and its contractors and subcontractors as applicable, shall submit to the agency a plan approved by the State Water Resources Control Board that ensures that agricultural water delivered by the public water agency is used in an economically efficient manner and that water is not wasted. The plan shall demonstrate the implementation of financially efficient and technologically feasible methods of water use reduction.

79622. (a) The Authority shall be authorized to issue revenue bonds to finance the design, environmental review, permitting and construction of the Facility, as well as for other purposes that are consistent with this Division.

(b) The revenue bonds shall be repaid by charges to the water contractors and other beneficiaries that contract for the use of the facilities constructed pursuant to this chapter, commensurate with the benefits received. No charges shall be applied to repay the revenue bonds which are not directly related to the construction, operation, maintenance, and replacement of the facility or for other purposes that are consistent with this Division.

(c) Except for the fee imposed by Chapter 8, as required by Chapter 10 (commencing with Section 11900) of Part 3 of Division 6, any costs incurred in developing, constructing or operating the Delta Conveyance Facilities for the enhancement of fish and wildlife or the development of public recreation shall not be charged to the contractors and shall be non-reimbursable costs.

(d) The Authority shall charge a fee for the transmission of water through the facility sufficient to cover

- (1) Repayment of the revenue bonds issues pursuant to subdivision (a)
- (2) Operation and maintenance of the facility.
- (3) The salaries and other ongoing expenses of the Joint Powers Authority and the Delta Authority.
- (4) The annual audits required by Section 79730.

DRAFT

(5) The costs imposed on the Authority by local, state and federal agencies and the courts.

(6) Notwithstanding Section 13340 of the Government Code, the fee revenue shall be continuously appropriated to the authority for purposes of this section.

79623 (a) The Authority is authorized to contract to construct, own and operate a facility to relocate the intake of the North Bay Aqueduct to the Sacramento River. The North Bay Aqueduct Relocation Facility may also convey water for local water agencies that can reasonably be served from the facility, including, but not limited to, the City of Davis. The North Bay Aqueduct replacement shall be considered part of the facility.

(b) The Authority shall be the lead agency for conducting environmental studies for the North Bay Relocation Facility pursuant to the California Environmental Quality Act.

(c) The Authority shall contract to construct the facility, subject to contracts with participating agencies to repay the Authority's costs.

79624.(a) The Authority shall adopt or reject by majority vote within 60 days all decisions made by the Delta Watershed Conservancy created pursuant to Chapter 4 of this Division.

(b) The Authority shall adopt or reject by majority vote within 60 days all land use decisions made by the Delta Protection Commission which are made pursuant to the new powers provided to the Commission pursuant to Chapter 5 of this act. Decisions which are made by the Commission pursuant to their powers prior which existing prior to the effective date of this act shall not be reviewed by the Authority.

(c) The Authority shall adopt or reject by majority vote all design, construction, and operational decisions made by the Joint Powers Authority formed pursuant to section 79610.

79626. The Authority may receive grants or gifts from public agencies, private entities, or individuals for the purposes of this act.

79628. The Authority shall be represented by the Attorney General in any litigation, and shall reimburse the Attorney General for any costs incurred.

79630. (a) The Auditor General shall audit the Authority annually, and shall be reimbursed by the agency for the audit. The Auditor General shall report the findings of the audit to the Legislature and the Governor, and shall make the results of the audit available to the public by posting that information on its Internet Web site.

(b) The Legislature may appropriate funds for an independent audit of the agency.

79632. Venue for any litigation brought concerning the construction or operation of the facility implemented pursuant to this division shall be the Superior Court of Sacramento County.

DRAFT

79634. The Authority shall develop and take actions to address near-term water supply reliability needs in the delta, including:

- (a) Actions to ensure that urban and agricultural water supplies derived from or crossing the delta, including water supplies within the delta to support beneficial uses, are not disrupted because of catastrophic failures of the delta levees resulting from earthquakes, floods, land sinking, rising ocean levels, or other forces. Such actions shall include projects to improve the reliability and emergency preparedness of water supplies for public health and safety by interconnecting existing critical water supply aqueducts that serve public health and safety needs and cross multiple Delta islands.
 - (1) The Authority shall enter into a Memorandum of Understanding with the Department to enhance the Department's ability to respond to levee breaches and to reduce the potential for levee failure, including, but not limited to, the following:
 - (A) Acquisition and positioning of emergency construction materials and equipment.
 - (B) Emergency projects to prevent levee failure or repair levees or other flood control facilities to restore conveyance and flood protection.
 - (C) Preparation for, and implementation of, a delta emergency operations plan.
 - (D) Emergency contracts for activities relating to a flood fight or levee failure to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.
- (b) Specifically, priority shall be given to the improvement of flood protection for vital public water supplies by protecting critical water supply aqueducts that serve public health and safety needs and cross multiple Delta islands. To achieve improvements expeditiously the Authority is authorized to make advance funding commitments for this work under agreements with an agency capable of carrying out the work to protect water supply infrastructure.
- (c) Funds to pay for actions required by this Section shall be derived from General Obligation bonds, not from charges to water users.

Chapter 4. Delta Watershed Conservancy

79640. (a) There is hereby created within the California Coastal Conservancy The Delta Watershed Conservancy consisting of 5 members appointed by the Governor.

(b) The Delta Watershed Conservancy shall serve as the land purchasing agent for the Authority for environmental and restoration purposes.

DRAFT

79642. The Conservancy is authorized to expend the funds in the Water Quality and Environmental Improvement Fund, created pursuant to Chapter 8 of this Division, and bond funds generated pursuant to Chapter 9 of this division on projects and programs to restore and enhance the Bay-Delta ecosystem and improve water quality. Funds shall be expended only within the watershed of the San Francisco Bay-Delta, and within the watershed of the Trinity River.

(a) The Delta Watershed Conservancy shall establish Bay Delta ecosystem restoration goals and a plan to achieve those goals. The goals and plan shall be updated at least every ten years. The goals shall include:

- (1) restoration of listed and candidate species pursuant to the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050 of Division 3 of the Fish and Game Code), and the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.), with the goal of allowing populations of listed and candidate species to become large and stable enough so that they no longer need be listed, or be considered for listing.
- (2) Restoration and expansion of wetlands.
- (3) Restoration of anadromous and other native fish species, by providing improved and expanded spawning, rearing, and migration route habitat.
- (4) Restoration of riparian habitat.
- (5) Restoration of islands in the Delta by growing vegetation, thereby reducing the production of global warming gases.
- (6) Creation of carbon mitigation programs in the primary zone, as defined in Section 29728 of the Public Resources Code, to reduce or eliminate climate change gasses emitting from delta islands and farms in accordance with Division 25.5 (commencing with Section 38500) of the Health and Safety Code.
- (7) Other biological restoration programs.

79643. (a) Revenues generated for capitol outlay projects pursuant to the sale of General Obligation Bonds pursuant to Chapter 9 and fees generated pursuant to Chapter 8, shall be utilized for ecosystem restoration activities identified in the Delta Blue Ribbon Task Force, December 14, 2007 report, **“Foundation Concepts and Initial Activities for Restoring the Delta Ecosystem,” to be prioritized by the Conservancy as follows:**

- (1) Restore tidal marsh in Cache Slough complex
- (2) Restore tidal Marsh in Suisun

DRAFT

- (3) Conserve Cache Slough – Suisun ecological corridor
 - (4) Yolo By-pass Enhancements
 - (5) Enhance Mokelumne and Cosumnes floodplains linked to tidal restoration
 - (6) Restore Tidal Marsh at Dutch Slough
 - (7) Evaluate and Implement if Effective: reconnect Elk Slough to the Sacramento River and manage Elk, Sutter and Steamboat Sloughs for salmon passage and fish habitats
 - (8) Provide matching funds to improve wildlife-friendly agriculture
 - (9) Evaluate potential for lower San Joaquin River floodplain and implement if viable
 - 10) Create clear passage route for migratory fish (especially salmonids) from Vernalis to Chipps Island: reverse selected constructed waterways connections
 - 11) Conserve lowland grasslands
 - 12) Increase late winter and early spring San Joaquin flows for fish
 - 13) Restore tidal marsh in Fabian-Union-Middle Roberts complex
- (b) Essential Parallel Activities
- (1) Invasives control
 - (2) Increase spring Delta outflows
 - (3) Increase fall Delta outflows to maintain X2 at 80km Sep-Dec
 - (4) Implement short-term conveyance enhancements to reduce known conflicts with Delta ecology such as entrainment
 - (5) Provide cost share for subsidence reversal and carbon sequestration wetlands at Sherman, Twitchell, Jersey Islands
 - (6) Reduce contaminant loadings
 - (7) Experiment with targeted salinity intrusions to control invasive species and promote fish populations
 - (8) Screen diversions where determined beneficial by fish biologists

DRAFT**(9) Replace earthen portions of railroad with causeway across Yolo Bypass**

79644. The Conservancy shall consult with CALFED, or its successor, and the agencies that participate in CALFED to avoid duplication, and increase the effectiveness of expenditures under this division. The Conservancy shall consider the objectives and functions of the CALFED Bay-Delta Program in developing its expenditure plan under this division.

79646. The Conservancy shall not, by itself, carry out construction or ecosystem restoration programs financed by this division, but shall award grants and contracts to public agencies and nonprofit organizations, including local conservation corps, to carry out these programs.

79648. The Conservancy shall utilize capital outlay funds to purchase water for the environment and other beneficial uses.

Chapter 5. Delta Protection Commission

29781. The approval of development by the city or county in the primary and secondary zones of the Delta shall not be effective unless approved by the Commission.

29782. The Commission shall disapprove any development not necessary to maintain agricultural or habitat protection land uses in the primary and secondary zones of the Delta below 2 feet above mean sea level. This shall include lands adjacent to but not within the legal Delta, if that development would:

- a) Result in a threat to the safety of those living or working in the development;
- b) Result in damage or destruction in the case of flooding or seismic activity, or
- c) Make flood control or flood management in the Delta more difficult.

Chapter 6.

79650. No public agency, including any state agency, shall manage lands they own within the Delta in a way which results in a reduction in the elevation of those islands. All public agencies owning land in the Delta shall manage those lands to improve habitat values, and to reduce the emission of global warming gases.

Chapter 7. Delta Science Advisory Panel.

79660. (a) There is in the Delta Water and Land Use Authority a Delta Science Advisory Panel consisting of scientists with knowledge of hydrology, geomorphology, biology, climatology,

DRAFT

economics, soils and civil engineering, seismology, geology, and other disciplines relevant to the management of the Bay Delta watershed.

(b) The Delta Science Advisory Panel shall have no more than 11 members and include but not be limited to employed or retired scientists from Federal and State agencies not having major project or regulatory authority over the Delta, the University of California and California State University systems, and non-government organizations.

(c) Panel members are to be selected by the Board from a list of nominees provided by the University of California Water Resources Center Director and the USGS Director in Sacramento.

(1) Panel members shall serve three-year terms with the panel Chair being selected by the panel members.

(d) The Science Advisory Panel shall hold public meetings and issue an annual report with specific findings on scientific issues related to the Delta.

(1) The report shall provide scientific and technical findings to the Authority regarding management of the Delta and potential actions of the Authority as well as identifying short-term and long-term items of research (with preliminary cost estimates and prioritized in order of importance) with identified relevance to the design, management and operations of the Delta conveyance facilities consistent with the goals of this Act.

(2) The report shall report to the authority conflicts between design, construction and operation of the facility, and scientific knowledge regarding possible ways to improve water quality, ecosystem restoration, and methods to improve efficiency of water transport to water users.

(3) The Authority shall consider, and adopt where feasible and practical, changes in design, construction and operation which, in their opinion, would better utilize the scientific information provided by the Science Advisory Panel.

(e) For its first 10 years, at least 10% of the Authority's budget shall be devoted to a Delta Solutions Program of scientific and technical work. This program shall be designed in consultation with the Delta Science Advisory Panel.

Chapter 8. Clean Drinking Water, Water Quality Improvement, Environmental Enhancement, and Water Supply Disaster Prevention Fund.

79670. (a) There is hereby created the Clean Drinking Water, Water Quality Improvement, and Environmental Enhancement Fund.

(1) All Federal and State contractors and any local water agency shall pay a fee not to exceed \$50 per acre foot of water transmitted through the facility to the Authority that shall be deposited

DRAFT

in the fund. The fee shall be increased annually in proportion to the consumer price index. Upon commencement of operation of the facility, the same fee shall apply to water pumped from the Delta by the State Water Resources Development System and the Central Valley Project even if it does not pass through the facility.

(2) The Authority shall be authorized to charge a fee of \$5 per acre foot to water agencies who divert water upstream of the Delta, who, under current state or federal law are not otherwise required to pay mitigation fees for impacts of their diversions on ecological functions of the Delta.

(3) The Authority shall set the fee and adjust it biannually at a level sufficient to fund a robust environmental restoration program for the Delta identified by the Delta Blue Ribbon Task Force in its December 14, 2007 report, "**Foundation Concepts and Initial Activities for Restoring the Delta Ecosystem.**"

(b) Notwithstanding Section 13340 of the Government Code, the moneys in the fund are hereby continuously appropriated, without regard to fiscal years, to the Authority.

(c) All moneys in the fund shall be expended only for the purposes of, and in accordance with, this Division.

(d) The implementation of a program by the Authority in the primary and secondary zone, as defined in Section 29728 of the Public Resources Code, to reduce or eliminate climate change gasses emitting from delta islands and farms in accordance with Division 25.5 (commencing with Section 38500) of the Health and Safety Code. The Authority shall prepare plans to sequester carbon where feasible by establishing or reconstructing delta wetlands, by agreement, on public or private lands.

(e) Funds deposited into the fund pursuant to Chapter 9 shall only be used for capital outlay projects. Other funds may be used for capital outlay or other purposes.

(f) No funds generated from the fees imposed in this section shall be used to pay for the programs authorized unless the Authority finds that the project or program to be funded mitigates damages caused by the use of water by those paying the fees.

Chapter 9. Fiscal Provisions

79680. (a) Bonds in the total amount of four billion dollars (\$4,000,000,000), not including the amount of any refunding bonds issued in accordance with Section ____, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in Chapter 4 of this division and shall be deposited in the Water Quality and Environmental Improvement Fund created pursuant to Chapter 8 and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute valid and binding obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the

DRAFT

punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) The Treasurer shall sell the bonds authorized by the division upon the terms and conditions specified in a resolution to be adopted by the committee pursuant to Section 16731 of the Government Code.

79681. The bonds authorized by this division shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law, and all of the provisions of that law apply to the bonds and to this division and are hereby incorporated in this division as though set forth in full in this division.

79682. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this division, the Clean Drinking Water, Water Supply Security, and Environmental Improvement Bond Finance Committee is hereby created. For purposes of this division, the Clean Drinking Water, Water Supply Security, and Environmental Improvement Bond Finance Committee is “the committee” as that term is used in the State General Obligation Bond Law. The committee consists of the Controller, the Director of Finance, and the Treasurer, or their designated representatives. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(b) For purposes of the State General Obligation Bond Law, the Authority is designated the Department.

79683. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this division to carry out this division and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

79684. There shall be collected each year in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

79685. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this division, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this division, as the principal and interest become due and payable.

(b) The sum that is necessary to carry out Section 79***, appropriated without regard to fiscal years.

DRAFT

79686. The Authority may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account in accordance with Section 16312 of the Government Code, for the purpose of carrying out this division. The amount of the request shall not exceed the amount of the unsold bonds that the committee has, by resolution, authorized to be sold for the purpose of carrying out this division. The Authority shall execute those documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the department in accordance with this division.

79687. Notwithstanding any other provision of this division, or of the State General Obligation Bond Law, if the Treasurer sells bonds that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and for the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds, as may be required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

79688. For the purposes of carrying out this division, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this division. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, with interest at the rate earned by the money in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this division.

79689. All money deposited in the fund that is derived from premium and accrued interest on bonds sold pursuant to this division shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

79690. Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, the cost of bond issuance shall be paid out of the bond proceeds.

79691. The bonds issued and sold pursuant to this division may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the electors of the state for the issuance of the bonds under this division shall include approval of the issuance of any bonds issued to refund any bonds originally issued under this division or any previously issued refunding bonds.

79692. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this division are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

SEC. 2. Section 1 of this act shall become operative only if both of the following occur:

DRAFT

(a) SCA 2 of the 2007–08 Regular Session is submitted to and approved by the voters at the November 2008, statewide election.

(b) The voters approve the Clean Drinking Water, Water Supply Security, and Environmental Improvement Bond Act of 2008, as set forth in Section 1 of this act.

SEC. 3. (a) Notwithstanding any other provision of law, all ballots of the election shall have printed thereon and in a square thereof, the words: “Clean Drinking Water, Water Supply Security, and Environmental Improvement Bond Act of 2008” and in the same square under those words, the following in 8-point type: “This act provides for a bond issue of four billion dollars (\$4,000,000,000) to provide funds to substantially improve drinking water quality, enhance the environment, and prevent disasters from interrupting California’s major water supply.”

(b) Opposite the square, there shall be left spaces in which the voters may mark the ballot in the manner required by law to indicate whether they vote for or against the act.

(c) Where voting in the election is done by means of voting machines used pursuant to law in a manner that carries out the intent of this section, the use of the voting machines and the expression of the voters’ choice by means thereof are in compliance with this section.

SEC. 4. Notwithstanding Sections 13247 and 13281 of the Elections Code, the language in Section 3 shall be the only language included in the ballot label for the condensed statement of the ballot title, and the Attorney General shall not supplement, subtract from, or revise that language, except that the Attorney General may include the financial impact summary prepared pursuant to Section 9087 of the Elections Code and Section 88003 of the Government Code. The ballot label is the condensed statement of the ballot title and the financial impact summary.

SEC. 5. Notwithstanding the requirements of any other provision of law, the Secretary of State shall submit Section 1 of this act to the voters at the November 2008, statewide election.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are: In order to enhance the security and reliability of the state’s water supplies, as soon as possible, thereby protecting public health and safety and the environment, it is therefore necessary that this act take effect immediately.