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## Legal Updates & News

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## California Passes Comprehensive Water Legislation, Setting Historic Precedents in Water Policy

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by [Mitchell S. Randall](#), [Rachel Peterson](#), [Miles H. Imwalle](#)

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Following an all-night special session, the morning of November 4 saw the comprehensive “2009 Delta/Water Legislation” pass the California Legislature. The several bills that make up the package set out guidance for managing the Sacramento—San Joaquin Bay—Delta Estuary (Delta), the five-county area that supplies water to two-thirds of the state’s population, is a critical component of water supply to California’s agricultural sector, and is home to more than 750 plant and animal species, some of which are listed as endangered. As the Delta’s water goes, so goes the state’s – making this legislative package one of the Legislature’s most important water-related acts in a generation.

The package consists of five bills, whose content reflects the inextricable linkages between the health of the Delta and California’s statewide water supply management practices and policies. The bills descend directly from those goals set out in the blue-ribbon [Delta Vision Strategic Plan](#), a December 2008 document with findings and recommendations for managing the Delta as a crucial component of California’s water supply system. The 2009 Delta/Water Legislation, in codifying policies such as a 20% per capita urban use reduction target, mandatory monitoring of groundwater levels, new measuring requirements for agriculture, enhanced penalties for improper diversion, alongside establishing a new governance structure for the Delta, directly implements some of the Delta Vision Strategic Plan’s most important recommendations.

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## **A. The Sacramento—San Joaquin Delta Reform Act of 2009 (SBX7 1) (Reform Act)**

The Reform Act, the primary bill in the package, establishes the “coequal goals” of protecting the environment and ensuring a reliable water supply. These coequal goals may be the most significant step taken by the Delta Vision Strategic Plan. As broad as they sound, the coequal goals mark an important shift in policy for California’s approach to the Delta. Today, no single authority is in charge of managing the Delta, and all interests compete for resources – a situation that the Reform Act characterizes as “not sustainable” and that “results in a high level of conflict among various interests.” The Reform Act now makes reliability and environmental protection coequal, and of primary importance.

Moreover, where today so much of the state relies deeply on the Delta, a natural resource that, in the words of the Legislature, exists “in the midst of an ecological crisis,” the legislation aims to move from managing crisis to managing more tolerable levels of risk.

To that end, the Reform Act calls for ultimately *reducing* California’s reliance on the Delta, by meeting water supply needs “through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency.” This statewide call to action is the source of several precedent-setting policies included in the legislative package.

### ***Restructured Governance of the Delta***

The Legislature’s aim is to mitigate the factors – “diversions of water, pollution, urbanization, flood and seismic risks, and invasive species” – that threaten the Delta’s capacity to serve California. The restoration is to be accomplished through a welter of new state agencies, reform to existing regional agencies, a palette of expanded powers, and an array of planning processes.

### ***The Delta Stewardship Council (Council)***

- A new, independent state agency, with a seven-member board, four of whom will be appointed by the Governor, one by the Senate Committee on Rules, one by the Speaker of the Assembly, and one by the Chair of the Delta Protection Commission.
- By March 31, 2012, the Council must develop the Delta Plan, a comprehensive plan for the Delta that furthers the coequal goals of reliability and environmental protection. By addressing environmental, recreational, agricultural, and economic issues, and by incorporating the work of other regional commissions and plans, the Delta Plan is meant to become the overall long-term guidance document for the Delta.
- Local governments whose jurisdiction falls within the Delta and Suisun Marsh must certify to the Council that certain agency decisions – such as approval of a development project or land use policy – are consistent with the Delta Plan. Individuals who disagree with that certification may file an appeal with the Council, and if the appeal is upheld, the project or policy must be revised to enable a new certification to be granted.
- The Council is also empowered to review new climate change—related transportation and land use plans, to ensure that management of the Delta is consistent with goals established to mitigate the impacts of climate change. (To read our recent client alert about S.B. 375, California’s transportation, land use,

and climate change bill, [click here](#).)

### ***The Delta Protection Commission (Commission)***

- An existing body made up of representatives of Delta cities and counties that recommends strategies and actions to the Delta Stewardship Council with the aim of “preserving the Delta as an evolving place.”
- The Commission is tasked with creating various plans – addressing resource management and economic sustainability, for example – that are to be proposed to the Council for inclusion in the broader Delta Plan.
- The Commission’s existing authority to review local land use plans remains in place: within 180 days of the Commission’s adopting, updating, or changing its resources management plan, local governments must submit amendments to their General Plans that make them consistent with the resources management plan.

### ***The Delta Watermaster***

- A Delta Watermaster is to be appointed by the State Water Resources Control Board, in consultation with the Council, to monitor and enforce compliance with board orders and license and permit conditions within the Delta.

### ***The Sacramento—San Joaquin Delta Conservancy (Conservancy)***

- A new state agency within the Natural Resources Agency, with a governing board of eleven appointed, voting members, and an additional ten liaison, non-voting advisers.
- The Conservancy will act as the primary state agency that implements ecosystem restoration in the Delta. Through programs and grantmaking to support water quality protection, habitat conservation, and flood resilience, among other activities, the Conservancy will support efforts that “advance environmental protection and the economic well-being of Delta residents.”
- The Conservancy’s powers specifically do not extend to land use authority over any Delta jurisdiction, nor to water rights held by others.

### ***The Delta Independent Science Board***

- A new state agency with no more than ten members appointed by the Council.
- The Delta Independent Science Board will oversee the implementation of the “Delta Science Program,” aiming to provide the best possible unbiased scientific information to inform water and environmental decisionmaking in the Delta.

In addition to the authority granted to the above agencies, the State Water Resources Control Board is tasked with the determination of water flow criteria “necessary to protect public trust resources” within the Delta, which will form the basis for determining any change in a point of diversion. The Reform Act requires that any change in a point of diversion of the State Water Project or the Central Valley Project from the southern Delta to a point on the Sacramento River shall include appropriate Delta flow criteria.

## **B. The Safe, Clean, and Reliable Drinking Water Supply Act of 2010 (SBX7 2) (Bond Act)**

The Bond Act approves an \$11.14 billion bond package to be placed before voters in November 2010. Revenue from the bonds would fund numerous projects around the state, including: statewide storage and transfer improvements (\$3 billion); Delta sustainability projects (\$2.25 billion); watershed conservation and protection (\$1.785 billion); water recycling and conservation (\$1.25 billion); and water supply reliability projects for urban users (\$1.4 billion). Notably, the package does not include bonds to construct any new facility that conveys water directly from the Sacramento River to the State Water Project or the Central Valley Project pumping facilities in the south Delta. The conveyance facility, if built, is to be paid for by the water agencies that benefit from the design, construction, operation, or maintenance of those facilities.

## **C. Groundwater Monitoring (SBX7 6)**

For the first time in California, local water agencies will be required to monitor groundwater elevations throughout the state, and to publish the data with the Department of Water Resources (DWR). As California comes to terms with yearly water scarcities, this bill addresses the need for consistent, reliable data – currently not measured at all, or measured with wide inconsistencies – on groundwater levels. The data is viewed by water experts as essential to water management.

## **D. Water Conservation for Urban and Agricultural Users (SBX7 7)**

Between now and 2020, California must achieve a 20% drop in urban per capita water use across the state. This codifies the goal set by Governor Schwarzenegger, and set out in the Delta Vision Strategic Plan.

Urban-serving water agencies have a wide menu of choices in how to comply, which in part credits agencies that made substantial capital investments in conservation measures after the drought of the early 1990s.

Agriculture-serving water suppliers must achieve certain water use reductions as well, a requirement linked to a suite of first-ever policies that will apply to the state's economically crucial, water-dependent agricultural sector. For the first time in the state's history, agricultural users must measure the volume of water used. Second, water volume could begin to cost agricultural operations more: agricultural water suppliers are now required to account for volume used in their pricing structure. Further, if "locally cost-effective and technically feasible," suppliers must implement pricing incentives such as efficiency, conjunctive use of groundwater, increasing groundwater recharge, and seasonal pricing based on then-current conditions. Finally, agricultural water suppliers must adopt, by December 31, 2012, agricultural water management plans similar to those that have been prepared by their urban counterparts since the 1980s.

## **E. Water Diversion and Use Reporting (SBX7 8)**

The final piece of the legislative package sets out new requirements for the water diversion statements that must be filed with DWR. It eliminates an exemption that previously applied to diverters within the Delta – the estimated 1,800 municipal, agricultural, and industrial diversions believed to divert 5% of the Delta's freshwater flows. The bill also appropriates funds for permanent water right enforcement positions,

providing a new level of protection for the state's water rights system.