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Water package lacks clout to reverse Delta's decline

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The momentous reform of California's water system signed into law last week is largely toothless where it matters most: Action to reverse the Sacramento-San Joaquin Delta's environmental decline.

That decline was a key reason for the long fight that led to the reforms. And indeed the new law puts into writing that the Delta's environment is equally important to the enormous water demand straining it. State policy also now requires reducing demand for the Delta's water.

Both are important changes that will remain on the state's books, even if voters reject an \$11 billion water bond on the November 2010 ballot, designed to fuel the law's provisions.

But many of the changes may not live up to high expectations surrounding the reform package, said Holly Doremus, a University of California, Berkeley, professor of environmental law.

For instance, she said, the new government body created to carry out these changes – the Delta Stewardship Council – doesn't have the authority to enforce many of its new rules.

The result could be more of the conflict between wildlife and water interests that has long plagued the Delta.

"This package does not confront the really tough questions," said Doremus, co-director of Berkeley's Center for Law, Energy and Environment. "It's not going to radically shift anything."

'It's got no teeth'

In many important areas, Doremus said, the Delta Stewardship Council is left at loose ends:

- The council is charged with creating a "Delta Plan" to balance environmental and water needs, but the reform package sets no path to achieve this tricky balance, or standards to resolve conflict.
- The council is empowered to hear appeals of state and local projects alleged to conflict with the Delta Plan, but it has no power to amend or deny projects.
- The council has no funding to operate beyond the current fiscal year. A dedicated fee could be proposed in future legislation, but this proved too toxic to be included in the present reform package.

- And on the critical question of a controversial Delta water diversion canal, the council can only hold hearings on the matter, and must include a canal in the Delta Plan if it's endorsed by the director of California's Department of Fish and Game.

"It's got no teeth, which is true of most of the stuff in this bill," Doremus said of the council.

Others note that a majority of the Delta Stewardship Council members are appointed by the governor to terms of four or six years. They are not "at will" appointments. This means Gov. Arnold Schwarzenegger, a canal advocate, may end up setting the council's agenda for years to come even though he has one year left in office.

"You've given a lame-duck Republican governor the majority votes for the next four to six years on this centerpiece of water policy," said Bill Jennings, executive director of the California Sportfishing Protection Alliance.

Funding is critical

Some supporters of the bill acknowledge the Delta Stewardship Council may be too weak.

"Frankly, in some ways, we would like to have seen a stronger council, but that's what was possible to get through the Legislature," said Barry Nelson, senior policy advocate at Natural Resources Defense Council, one environmental group that supported the bills.

"The key to the council's effectiveness is really going to be the quality of the appointments and the support that the administration gives this council," he said.

Nelson said the new laws will be effective in raising the stature of the Delta environment in many areas of regulation and project planning.

The lack of funding for the new council and conservancy is a problem the Legislature still must solve, Nelson said.

Otherwise, "you have a wish list, not a plan," Nelson said.

Tim Quinn, executive director of the Association of California Water Agencies, said many of his member utilities will be forced to mail bigger water bills to millions of customers to pay for a canal. Yet he acknowledged additional fees to support Delta management are necessary.

"It's something we have to deal with as an industry," he said.

Quinn called the bills historic and said they "largely got it right." The Delta Council will prove effective, he said, despite its limited powers.

"Privately, I probably would give the council more authority to enforce its views," Quinn said. "I think the council can be highly influential. It can make a real difference with the authority that it's got."

Flow rules are non-binding

The state Water Resources Control Board is required to set "flow criteria" for Delta waterways before approving a diversion permit for a new canal. This will spell out minimum river flows to protect the environment – a decision long coveted by environmentalists, but loathed by water users.

In the reforms, however, flow criteria are not legally binding.

Nelson and Quinn said the results will nonetheless push the water board to restrict the canal permit and perhaps modify many existing diversions in the Delta watershed.

Doremus is skeptical. "I don't think the board will go there if it doesn't have to," she said. "They've never had the political courage to do that."

The legislation also creates a Delta Conservancy charged with overseeing restoration of tens of thousands of acres of habitat. It is empowered to buy land and water rights. The goal, in part, is to improve wildlife numbers so dying species no longer restrict water exports.

But the conservancy's budget to operate and acquire land depend on the accompanying \$11 billion bond that comes before voters Nov. 2. Without it, there may be no significant habitat restoration.

"It is quite possible the promises for restoration will be consigned to the same wastebasket as decades of previous promises to protect the Delta," said Jonas Minton, water policy adviser at the Planning and Conservation League.

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