February 22, 2010 Water Forum Summary

California Water after the 2009 Legislative Package; Where are we and where do we go from here?

INTRODUCTION/WELCOME

Moderator Bill Jeffery introduced himself and thanked University of the Pacific and McGeorge School of Law for hosting the Forum. He thanked the three panel organizers: Margit Aramburu of the Natural Resources Institute, Jeff Michael of the Business Forecasting Center, and Rachael Salcido of McGeorge. He stated that the topic of the Forum is “California Water after the 2009 Legislative Package; Where are we and where do we go from here?” He welcomed and thanks the panelists and members of the audience. He said the goal of the Forum is to provide a neutral forum for thoughtful and knowledgeable people with differing views to come together to discuss this important challenge facing the State. He read a statement from President Pam Eibeck expressing her regret at not being able to attend and reinforcing Pacific as an institution that supports education, research, and debate, not an institution that takes sides or advocates a particular position. Mr. Jeffery added a caveat that the panelists are speaking as individuals, not representing a particular entity. He noted that handouts include brief summaries of the bills passed in 2009 and reviewed the format for the panels.

FIRST PANEL: GOVERNANCE AND LEGISLATION

Opening Statements: Mr. Jeffery asked each panelist to address the following question: Where are we and where do we go from here?

Senator Lois Wolk expressed her concerns that the newly adopted suite of laws will not resolve the existing problems including failure to enforce protection of resources, weak governance structures, agencies that do not enforce existing laws or protect statewide interests, or address the impacts of special interests on the Legislature. She expressed concern that the water contractors and legislators have create a situation that will fail. Senator Wolk said she had additional concerns about the interests of the five Delta counties because they were left out of the legislative process, their requests for key points were ignored, and they will have only one seat out of seven on the new Delta Stewardship Council; the laws do not include freshwater flow standards to protect the environment; the proposed bond will increase the State’s bond debt to a very high level and could result in further program cuts; the new laws do not include adequate protection for existing water rights; and the new governmental body created to oversee the Delta lacks adequate authority. She recommended several actions: reduce reliance on the Delta and its waters through recycling and groundwater management; promote inter-basin water transfers; create jobs in the Central Valley not dependent on Delta water exports; develop a realistic financing plan; prepare a plan for the Delta that includes Delta interests; and expand the Bay Delta Conservation Plan (BDCP)/Natural Community Conservation Planning (NCCP) process to include the local land use authorities that will be critical to its success.
Assemblyman Bill Berryhill said before the last legislative session commenced he saw the highest priorities to be for new storage, a delivery system that makes sense, and a sound fiscal program to pay for these improvements—probably a bond. He described himself as pragmatist and acknowledged the need for concessions to result in consensus, but he expressed concern that the bond bill became laden with “pork” and includes many local and regional projects, rather than projects that provide statewide benefits. He expressed grave concern about the State’s ability to fund the estimated one billion dollars a year debt repayment for the proposed $11.4 billion bond to be voted on in November 2010. He said expenditures by the State for local and regional projects should not be adopted by the voters in a bond, but should be subject to budget committee review and should be paid for from the general fund. Assemblyman Berryhill said he supports aspects of the new bills, such as groundwater reporting and steps toward regional self-sufficiency. He believes any plan for new water must include new storage; however, the 2009 legislation includes loopholes that may preclude any new storage. He said the recent legislative actions reflect the need for reform in Sacramento; the bills were passed in the dead of night and legislators did not fully comprehend what was in the bills. Assemblyman Berryhill said the top priority for the coming year is to educate legislators and the public about what is in the 2009 bills. Any solution for the State’s water system must include regional self-sufficiency and a reliable water delivery system.

Kathy Cole, Executive Legislative Analyst for Metropolitan Water District, said she was representing the Board of Directors and their adopted positions. She said Met had focused on three policy issues during the last session. The first policy issue, water conservation is key and the water use efficiency program to result in 20% reduction in use by 2020 is a critical program. She noted that Met has a policy of no increase of water from northern California, instead focusing on new local supplies derived from desalinization, cleanup of groundwater, recycling, and conservation. She said critical issues include establishment of a baseline, and then determination of measurement of success. The second policy issue, the Delta Vision Blue Ribbon Task Force made recommendations about new governance structures, and the Delta must be managed for the co-equal goals of both enhanced environmental health and reliable water supply. And the third policy issue, the BDCP process bringing together State and federal agencies under the State and federal Endangered Species Acts will result in a long-term management plan, sweeping changes to tens of thousands of acres of land to create new wetlands for fish habitat, and the means to separate the water supply for the environment from the water supply for export. She said Met is committed to implementation of the adopted legislative package. She noted that additional legislative work is needed to develop a long term financing plan to support the new governance structure in the Delta.

Tim Quinn, Executive Director of Association of California Water Agencies, said the legislative package is historic and represents the first major steps forward for California in the issue of water since the current system was approved in the 1960s. He said the step is critical because the State’s water system was built in the middle of the last century and the natural resources policies at that time were based on extraction of natural resources versus now, when the ecosystem values are included in the State’s policies. The State’s water system was not built for sustainability. He supports the concept of co-equal
goals of water supply reliability and ecosystem sustainability. Mr. Quinn said there are five elements in the legislative package that are important including: the policy commitment to co-equal goals of water export and the environment; the new governance structure including the Delta Stewardship Council, revamped Delta Protection Commission, new Delta Conservancy, and California Water Commission; support for local resource development versus increased exports from the Delta; the move beyond conservation to infrastructure fix; Delta changes through the BDCP and investment in new storage; evaluation of all stressors on the Delta, beyond just the pumps; and with the bond a realistic fiscal commitment to move the water systems from extraction to sustainability.

**Question 1: Mr. Jeffery said the federal government is a major player in California water; he asked does the new package address the federal role in California’s water and if yes, how?**

Ms Cole said the legislative package includes language to encourage coordination and said that while there are challenges with a new administration, the federal government will help. She noted the need for federal funds to support restoration projects in the Delta.

Senator Wolk said it is critical that the federal government be involved. However, she noted there is currently pressure on the biological opinions including review by the National Academy of Science and possible legislation.

Mr. Quinn said the 2002 Bay Delta Authority included seats for federal agencies but that approach did not work. He said the new Delta Stewardship Council is State only, but state-federal partnerships continue to be discussed.

Assemblyman Berryhill said the federal government should have a role as a partner; one way would be to fund shovel-ready projects with stimulus dollars to help move toward solutions while discussion of new storage and new canals continue.

**Question 2: Mr. Jeffery asked what will happen if the bond does not pass?**

Senator Wolk said there are funds in Propositions 1E and 84 that could be used for short-term projects in the Delta and to support reliability. She said there will need to be efforts to develop a realistic financing plan and many important projects will need to be funded, such as recycling and storage. She noted the only hearing on financing was held before her select committee where East Bay Municipal Water District estimated costs of $50 to $70 billion.

Mr. Quinn said he believes Californians will vote for the bond. He said the governance program will be in place regardless, and that the challenge will be to develop a new finance plan to implement the governance program.

Assemblyman Berryhill said if the bond is not passed, voters will be stuck with the governance program that he does not support because it omits local control and adds four more layers of bureaucracy. He supported working with the existing agencies. He said there is a need to move forward with interim projects to support farmers south of the Delta.
Question 3: Mr. Jeffery asked if the concept of “co-equal goals” is realistic?

Mr. Quinn said the concept of adapting the state’s water projects to include environmental objectives has been underway for 25 years starting with the Central Valley Project Improvement Act. He said the main job of the new Delta Stewardship Council will be providing an open, transparent forum to define what co-equal goals means. He said the concept will be incorporated in to all future plans for the Delta.

Senator Wolk said the intent of co-equal goals is positive. She noted that to enforce co-equal goals, the Delta Stewardship Council needs the power to do so. The Council does not have the power to compel changes in behavior by those that create problems. She said she had tried to have the concept of the Delta itself included as a goal, and be part of the weighing and balancing of options. Unfortunately, she was not successful in that effort.

Assemblyman Berryhill said the concept of co-equal goals has not been met with co-equal dollars. He said the bond should have been limited to funds for the Delta and for new storage; instead it is filled with projects that do not have a direct relationship to the Delta or solving the State’s water problems.

Ms Cole said that the CALFED process did not include explicit language regarding the co-equal goals for water supply and the environment. She said it is critical that the policy is now in State law and will be used to strike a balance between uses.

Question 4: Mr. Jeffery asked why the legislative package only includes groundwater monitoring and does not include comprehensive groundwater management?

Mr. Quinn said the provision for statewide, locally-controlled groundwater elevation monitoring was a broadly supported, logical first step to help the State better understand its groundwater resources.

Senator Wolk said that due to the large role groundwater plays in the State’s water supply, it is important to know how much we have. She noted it has been very difficult to pass legislation about groundwater and said that both conservation and groundwater elements of the legislation were weakened in the review process.

Assemblyman Berryhill said he is opposed to the program as an unnecessary increase in bureaucracy. He said regulation of groundwater pumped by farmers is not necessary as that water just goes right back onto the land and could adversely impact property rights.

Question 5: Mr. Jeffery noted the 20% reduction in urban water use by 2020 and asked about the absence of a comparable requirement for agriculture?

Ms Cole said the 2020 conservation goals were a cornerstone of Met’s support for the overall package and she noted that the bill includes flexibility and a check in 2015 that could lead to clarifying legislation. Regarding agriculture, she said there was no interest in harming the economic viability of agriculture and instead agriculture must adopt Best Management Practices and develop agriculture water management plans. All in all, the legislation is a step forward.
Assemblyman Berryhill said it was hypocritical to omit San Francisco and Los Angeles from the mandated conservation goals. He said water is a precious commodity for agriculture and expensive in some regions. He said even with inexpensive water, he uses drip irrigation and monitors soil moisture in his vineyards.

Senator Wolk noted that the process of voting on the legislative package had resulted in inequities and loopholes.

Mr. Quinn said ACWA is committed to conservation and supports incentive based conservation. He said the largest component of bond funding is for local resource incentives. He added that conservation is appropriate for urban water users, but businesses including agriculture should have the standard of efficiency, not conservation.

SECOND PANEL: ECONOMICS

First Speaker: Dr. David Sunding

Dr. Sunding noted that economics provides good tools to analyze the implications of water policy choices. He said that planning discussions for the Delta up until now have been led by engineers and biologists, but now is the time for economists to play a larger role analyzing cost/benefit ratios and cost allocation.

Dr. Sunding listed four key questions and a fifth question regarding the BDCP, a potential peripheral canal, and Delta management:

- How much will it cost?
- How long will it take to build?
- What is the value of more reliable water supply to urban and agricultural users?
- What is the cost of catastrophic failure if we do nothing?
- What is the value of biodiversity? Dr. Sunding noted this last question is an issue of social preferences and is an academic question.

Addressing the first two questions, Dr. Sunding said the estimated cost of a tunnel to move export water around the Delta is $11 billion, which at a 5% cost of capital over 40 years equates to a cost increase of about $100 per acre foot exported from the Delta. He said this is a considerable investment; is it the smartest investment? He noted that the costs would be front-loaded and that the benefits would be over a long period of time. He said timing is important and that benefits and costs should be compared with net present values rather than annualized costs. He used a simple example to show why annualized benefits must exceed annualized costs by over 25% to justify building new conveyance because of the timing issue.
Dr. Sunding said that doing nothing is not an option for the Delta. He noted that there will still be flow restrictions and mitigation obligations so the baseline expenditure is not zero. He said the focus of economic analysis should be on the net costs and benefits.

Regarding the value of reliability, Dr. Sunding said the flow requirements in the Delta affect the majority of the State—urban and rural, State and federal water projects, and northern and southern regions. He showed that reliability for southern California customers has been reduced by Judge Wanger’s decision regarding the Delta smelt (in 40% of years a 10% shortage; in 7% of years a 20% shortage, and in 4-5% of years a 30% shortage). He said the shortages are dramatic and show low level of reliability. He described adaptation devices including: conservation; agriculture to urban water transfers; conveyance improvements; recycling; stormwater capture; and augmented storage.

Dr. Sunding presented a recent study of a proposal in Central and West Coast Groundwater Basin in the Los Angeles area to more aggressively manage groundwater resources. In that area, groundwater is 40% of supply and imported surface water is 60% of supply. The Plan includes 34,000 acre feet of rainwater capture, 20,000 acre feet of recycling, and more aggressive management of groundwater storage. He estimates about $1 billion in net benefits over a 20 year study period, so these local water supply alternatives are very cost effective for this region. However, he noted that these investments will still not restore the basins to pre-Wanger decision flow conditions.

Dr. Sunding noted that agricultural water use and urban water differ because agricultural water use is an input into production and stimulates the local economy, while urban water use is consumptive. Agricultural water use, at the margin, results in $700 per acre foot in economic activity on the farm and in ancillary activities. He said that during the 1987 to 1992 drought, agriculture’s adaptations included increased groundwater pumping, fallowing, and increased water use efficiency. He noted that agricultural water use is more elastic than urban water use, and adapts to increased cost of water. Westlands Water District data shows they use groundwater to backfill for reduced surface flows, take advantage of water transfers for some needed water, and estimate fallowing of 180,000 acres in 2009. Those acres are a large percent of the approximately 300,000 to 350,000 acres fallowed in 2009 in the entire San Joaquin Valley.

Dr. Sunding said while some predicted water markets would help resolve water supply shortfalls, only about 3-5% of water in California is reallocated on the secondary market, versus 25% in Australia. He said there could be several reasons including environmental, legal/institutional, and misunderstanding of economics.

Regarding a research agenda to support decision-making about new Delta infrastructure, Dr. Sunding suggested: new economic models; better understanding of the value of reliability, especially for urban water users; better management and use of groundwater supplies; determination of the cost of catastrophic failure in the Delta; and better management and understanding of the role of water transfers.
**Second Speaker: Dr. Jeff Michael**

Dr. Michael made a presentation focusing on the question: Does water equal jobs? He said there is a lot of misunderstanding of the numbers that are in the press, and he addressed several questions: What is a fact? What is good sample data? What is a good forecast estimate? What is a bad forecast estimate?

He said a fact is only known after events are over; it takes about two years to develop facts on employment. They are based on tax records and other sources. He said facts are added to theories and used in models to develop forecasts. Dr. Michael noted that the San Joaquin Valley has a very different economy now than in the 1990s and since the water projects were built 50 years ago. Using data from Fresno County, he described the overlap and relationships between agriculture and construction labor, and discussed changes in farm labor in years with full water supply vs. drought years, and boom years of the 1990s vs. the current economic depression. He noted that agriculture jobs decreased rapidly since the late 1990s even when water supplies were high, and that agriculture’s dominant role in the regional economy has declined as the Valley has urbanized and grown in population.

Dr. Michael said good sample data can be found in monthly employment surveys and County unemployment data. He noted that reliable unemployment rates in small towns are only released every ten years with the Census; interim figures are estimates based on a crude formula using the most recent census which is now a decade old. Using Westlands Water District census tracts, he showed how the unemployment rates have increased from single digits in 1960 before the first Central Valley Project water deliveries in 1968, and steadily increased over the next 40 years to levels near 30% in 2000, among the highest unemployment rates in the State.

Examples of good forecast estimates include Dr. Sunding’s December 2008 estimate of 720 lost agriculture jobs and $48 million in lost agricultural revenue from smelt flow restrictions. The Business Forecasting Center currently (December 2009) estimates about 8,500 job losses from the drought, including about 2,000 lost jobs due the Endangered Species Act (ESA) flow constraints. In the same 2009 report, the Business Forecasting Center estimates 47,000 jobs lost in the construction business.

Bad forecast estimates can result from inaccurate data and model assumptions. He gave examples of bad forecast estimates that have been used in the current water debate, including current unemployment rate estimates for small towns, a series of overly high estimates of agricultural job loss from U.C. Davis in 2009, and a new report of 23,000 lost salmon fishing jobs produced by a consulting firm. These unreliable forecasts are heavily promoted by various interest groups and are harmful to public policy discussions.

Dr. Michael noted that in the long-run, it is important to remember that labor is mobile while land is fixed so the costs of reduced water supplies falls more heavily on landowners than workers over time. He concluded that the link between agricultural water supplies and unemployment is weak and that all Delta management options have employment effects somewhere and that there is no best option when it comes to jobs. He noted that there will be big impacts from proposed Delta projects, and there is a need for more serious economic analysis of the alternatives.
**Question 1:** Mr. Jeffery asked for comments on the economic implications of water transfers and water markets?

Dr. Sunding said he often hears concerns about the impacts of water transfers. He said he believes the urban and environmental groups appear to support transfers; it would not take a lot of water transfers to address supply and demand issues. He noted that urban water use is relatively small and inelastic. He said reallocating 10% of water supplies versus the current 3-4% would make the water systems more efficient. Dr. Sunding said there are area of origin issues and if the transfers are efficiency-based, there could be groundwater and return flow issues. He noted falling based transfers are more contentious however impacts could be mitigated by application of a severance tax.

**Question 2:** Mr. Jeffery asked what economics can tell us about allocating resources among various options, such as desalinization, peripheral canal, etc.?

Dr. Sunding said there are many options, or portfolio choices that all need to be part of a mix and considered. He said there is not one solution.

Dr. Michael said economists can provide tools for cost/benefit analysis of various alternatives.

**Questions 3:** Mr. Jeffery asked about the impacts of falling and conversion from permanent crops to row crops?

Dr. Michael said modern agriculture uses less labor and is more capital intensive, involves more debt, more fixed costs and fewer variable costs, and is therefore more vulnerable to water supply disruptions. Permanent crops are capital investments and further increase the vulnerability. He said planting permanent crops in areas of variable water supplies was a risky choice made by farmers in hopes of earning higher profits.

**PANEL THREE: SCIENCE AND RESEARCH**

**Opening Statements:** Moderator Bill Jeffery asked the four panelists to address the following question: In your opinion, does the package of bill effect a small, large, or other step forward in resolving California’s water supply and environmental health issues?

Ryan Broddrick, former director of Department of Fish and Game (DFG), said that in his field and policy positions at DFG, he saw that science has had to catch up to the demands of society. He was involved with “incident command” science addressing oil spills, chemical spills, and the attack of killer algae. He said that public agencies must respond to such incidents—direct short and long term recovery, and address long term allocation of recovery costs. Regarding the 2009 water legislation and the attempts to craft a future for the Delta, Delta science is still very young. Over the last 30-40 years, agencies collected field data and attempted to unwind the science; a deliberative process. Scientists acted like historians taking data and making conclusions; evaluating trends and responses. This approach worked until 2002. However, in 2006 when the pelagic organisms crashed, scientists determined that something big had happened in 2002. Mr. Broddrick noted that the large bonds approved by the voters
starting in the mid 1990’s provided lots of funding for California’s natural resources, but resulted in a change to the structure of state financing. Funding was shifted away from anchor programs at the State agencies and to consultants and universities. Regardless, the responsibility for decisions still rests with the regulatory bodies and the courts. The new bond will need to fund research and core programs at the agencies. Mr. Broddrick said the comprehensive monitoring and assessment program approved as part of the CALFED Record of Decision in 2000 was not funded. A real-time, comprehensive monitoring and assessment program is needed to forge reconciliation of California’s water policy, endangered species, fish and wildlife resources, and economics.

Jonas Minton, Water Policy Advisor for Planning and Conservation League (PCL), distributed a two page handout recommending a new research priority for the BDCP. Currently BDCP is proposing five intakes on the Sacramento River and two 7,500 cfs tunnels. Mr. Minton said the context for PCL’s new research recommendation is to develop scientifically based, enforceable and enforced conveyance system that will protect the water quality and ecosystem needs of the Delta, in addition to enhanced conservation, recycling, stormwater capture, and groundwater clean-up. He said the water systems must reduce reliance on and diversions from the Delta. The Delta locals must be involved in management of the region. PCL is urging analysis of one 3,000 cfs intake and one 3,000 cfs tunnel. The current proposals are too costly, may not meet approval of the regulatory agencies, are too big, and lack management guarantees for the long term maintenance of the Delta and its environment. Advantages of the new, smaller option are: small enough for a fish screen; would require maintenance of Delta infrastructure and water quality; would have fewer impacts than a canal; would provide water supply in case of a catastrophic event in the Delta; and could potentially have less opposition than a canal. PCL urges evaluation of a 3,000 cfs tunnel option.

Steven Phillips, Hydrologist with United States Geological Survey, discussed his past experiences with projects that had policy implications. He studied selenium impacts on waterfowl in the western San Joaquin Valley resulting in regulation of release of selenium into the San Joaquin River in 1996. He studied the San Francisco groundwater basin and determined that there are two groundwater basins with very different characteristics. In Lancaster, USGS studied aquifer storage and recovery including injection of surplus water in the winter for use in the summer to allow better control of the local water supply and helped replenish the groundwater table. In July of 2009, USCS released a hydrologic model of the Central Valley which will be used to analyze subsidence related to groundwater extraction and climate impacts on groundwater. Mr. Phillips suggested the role of science in policy development is to do “good science” and to improve ways to communicate that science to the decision-makers.

Rich Breuer, Department of Water Resources, said that generally crisis drives science. He said the rice herbicides in the 1980s affected areas downstream and scientific study and modeling developed new criteria to increase holding times in the rice fields. In the 1990s focus on Delta drinking water quality resulted in monitoring of bromides and organic carbon and allowed water agencies to appropriately treat these elements in the water supply. Since 1970, the Interagency Ecological Program (IEP) that includes nine state and federal agencies has helped ensure compliance with water quality requirements and monitored trends linked to operation of the water projects. He said every day 160-200 people are
monitoring and studying the Delta to provide information for decision-makers and others. He said good, sustainable science is the basis of the overall system. Mr. Breuer said while many of the recent concerns have been linked to the pump operations, there are many stressors impacting the Delta and scientists are key to determining the roles of the many stressors.

**Question 1: Mr. Jeffery noted that millions of dollars have been spent on research and asked what is missing in order to make informed decisions; what is your research priority?**

Mr. Minton said we need to determine how much water is needed for the Delta to be healthy. While the flow criteria in the new bill may not be enforceable, it will be informative.

Mr. Phillips said while we need tools and model development, it is data that goes into that research. He said there are a lot of water data gaps. These can be addressed through collection of bore hole logs, information on water use--such as pumping by private irrigators, and better monitoring of groundwater supplies.

Mr. Breuer said mandates and directions are needed to frame research. New scientific research must be focused to bridge between past research and current questions.

Mr. Broddrick said historically, science was used as a mile marker and it’s unreasonable to send questions back to scientists saying “further research is required”.

**Question 2: Mr. Jeffery asked about the variety of factors affecting Delta habitat and what research is needed to address the various factors?**

Mr. Minton said the crash of the smelt population clearly indicates a problem and the cause of the crash appears to be correlated with the increases in pumping from the Delta. He opined that diverting over half the water out of an estuary would appear to be a problem to the sustainability of that estuary.

Mr. Breuer said that historically there were no upstream reservoirs. He said there is not one smoking gun causing the decline of the estuary, but there are many subtle problems. One challenge is the movement of water through the estuary toward the pumps. He suggested that as California grows, there must be enhanced treatment of stormwater and wastewater discharges to protect water quality.

Mr. Broddrick said the premise of modifying the estuary and its impact on the fisheries was raised in the 1920s and again in the 1970s. The records show that the South Delta location of the diversion is not the best location for fish; however, the location was selected for social and economic reasons.

**Question 3: Mr. Jeffery asked for comments on the pluses and minuses of Senator Feinstein’s current bill amendment to allow diversions and her role in the National Academy of Science review of Delta biological opinions.**

Mr. Minton said Senator Feinstein is concerned about jobs and was using the early information about job loss. He said if the rider proceeds, environmental groups would likely leave the BDCP negotiation
table. He said the ESA is the backstop to the BDCP process and if Congress can override biological opinions, environmental groups have no motivation to continue in the BDCP process.

Mr. Phillips said review by the National Academy of Science will ensure appropriate scrutiny and peer-review of research to date.

Mr. Broddrick said the pain, dislocation, and loss of jobs in the Central Valley is remote to many, and Senator Feinstein’s proposal helped moved the debate forward.

**PANEL FOUR: LEGAL**

**Opening Statements:** Moderator Rachael Salcido introduced the three panelists: Stuart Somach, Scott Slater, and Dante John Nomellini, Sr. She asked the panelists to comment on the 2009 package of legislation and asked if the package represents a small, large, or other step forward in solving California’s water crisis?

Stuart Somach first said he was involved in the Delta package on behalf of clients and that he represents clients north of the Delta, and Yolo and Sacramento Counties. Mr. Somach said he is not convinced that the package is significant as it attempts to solve statewide water supply problems from a Delta centric perspective. He said the State’s water issues are not limited to the Delta and there may be unintended consequences from the package. He is particularly concerned with the addition of three or four more layers of government in the Delta—a region that is already heavily regulated.

Scott Slater said he represents clients north and south of the Delta that will be impacted by the outcomes of the legislation. He said he thinks the package represents the “other” category. He said he likes deals and is a pragmatist. He emphasized the need to understand various preconditions for crafting deals that stick. From the perspective of deal making it is necessary to understand the “misery index” and he noted there is a lot of misery in both ecosystem and supply reliability categories. He noted the legislative package was designed to create a structure to hold monies, to define obligation, and create a plan that will resolve the problems. However, the variables are not well defined, i.e. there is not a present, defined obligation and we do not know the amount of water available between supply and demand. He expressed concern about the amount of litigation which will preclude suitable negotiations. He asked that the various water interests stop litigating and negotiate a fair deal.

Dante John Nomellini, Sr., said he represents only Delta interests and said he sees nothing good in the legislative package. He said he believes the entire planning and legislative process was a means for the current Governor to implement a plan to move water from Northern California to Southern California via a peripheral canal around the Delta. He noted the Delta Stewardship Council will have four members appointed by the Governor whose terms will last long after the Governor is out of office. He said the legislative package will not lead to an independent solution and represents nothing new.
Question 1: Professor Salcido asked panelists to comment on the governance component of the legislative package and speak to the new Delta Stewardship Council’s role.

Mr. Slater said he is concerned that the Delta Stewardship Council will not be representative of the needs of those being governed. He said the legislation may lead to a breakdown between expectations and delivery.

Mr. Nomellini said the Delta Protection Commission will not be replaced by the Delta Stewardship Council, but the Delta Stewardship Council does not have to pay attention to what the Delta Protection Commission says, only “consider” its comments. He said the Delta Stewardship Council is not attached to the local community and was created to ensure movement of Northern California water around the Delta to the export pumps.

Mr. Somach said he finds it hard to believe that adding more governmental bodies will address the current problems; we have agencies passing responsibilities on to other agencies. He is also concerned with the general approach of abrogating decision making from elected representatives to appointed officials. He said the legislation keeps land use decision-making authority with the local governments and he is not sure how that will work with both the Delta Protection Commission and the Delta Stewardship Council. He predicts litigation will be needed to resolve these issues.

Question 2: Professor Salcido asked will there be an impact to area of origin or water rights generally?

Mr. Nomellini said the new laws state there will no impact to area of origin rights. However, he is concerned that the State Water Resources Control Board is not independent and has traditionally been controlled by governors. He predicts the requirements to measure and report diversions and to monitor groundwater will lead to the State Water Resources Control Board controlling water rights and making political decisions about allocation of water. He sees no useful purpose in measuring water diversions because water planning is based on land use, not water diversions. He stressed the need to honor the commitments made to protect area of origin rights and worries the new system will be based on breaking down water rights in Northern California.

Mr. Slater said he believes water rights are a very important form of property rights; rights that must be exercised with regard to impacts to the environment and using best management practices. He recognizes that people are concerned that the monitoring of diversions may undermine water rights as property rights and if deemed not to be property rights, water rights could be taken without compensation. He said the State needs to come to grips with water rights as property rights and that there is a social duty associated with enjoying the right to property. He said area of origin is a form of property rights and noted that we may find out soon the breadth of the claims.
Mr. Somach warned of unintended consequences of tinkering with the water rights system; this could lead to destabilizing of the water systems statewide. He said the Delta and Sacramento Valley are areas of origin. He noted lack of understanding of the legislation in the Legislature and said that the inclusion of only modest provisions protecting area of origin rights may ultimately result in those rights being ignored. He said there are two pending lawsuits that will address this issue.

**Question 3: Professor Salcido asked about potential for litigation stemming from the 2009 legislative package?**

Mr. Somach said it’s not a potential, it’s a certainty. The only question is who will file, when, and what will the suit address?

Mr. Slater said there are many pending and proposed lawsuits and asked what is the chance of resolving the State’s water issues with no rules and no process to bring the pending matters to conclusion.

Mr. Nomellini said the disparity between supply and demand is so great that is not possible to turn the surplus water contracts into firm supplies. He said everyone is fighting over shortages. Elements of the State and federal projects were never built and in a drought the areas of origin are eight million acre feet short without exports. He said there will be chaos unless the existing system of water rights is respected.

**Question 4: Professor Salcido asked if the proposed bond will fairly distribute costs between the contractors and the public?**

Mr. Nomellini said while there are some positive elements he does not support the bond as it will transfer costs meant to be paid by the water projects and pass those costs to the taxpayers. He said the water project was meant to be self-supporting and included affirmative duties that would be paid by the taxpayers under the proposed bond.

Mr. Somach said the bond was part of the overall deal, and worries that the focus is on the Delta and doesn’t adequate address issues in other parts of the State. He is not sure this bond is any different from ones in the past; will it solve problems? He would like to know who is appointed to the Delta Stewardship Council, and the discussion and direction of the Council prior to taking a position on the bond.

Mr. Slater said he needs to know more about how the funds would be used, who will be on the Delta Stewardship Council and the direction of the early actions. He said if the bond passes, he would recommend his clients use funds to enhance self-sufficiency knowing that litigation will delay program implementation.
**Question 5: Professor Salcido asked in light of the two co-equal goals in the package, what one law would you write?**

Mr. Slater said he would seek legislation embracing water rights as property, married with social responsibility. He said reallocation of water cannot focus on taking water away without creating outlets for some to continue to acquire water through transfers or water markets. He said Australia recently spent $3.1 billion buying back water rights something California must consider.

Mr. Nomellini said water transfers fly in the face of the basic promises that only surplus water would be taken from the system. He said if he could write one law he would turn the State Water Resources Control Board into a truly independent body, perhaps five retired justices appointed by the Judicial Council.

Mr. Somach said a State law supporting co-equal goals can be trumped by the federal ESA. He agreed no changes are needed to the existing water rights system which was derived from shortage. He said the State Water Resources Control Board just doesn’t work, and the one significant legislative act that could help would be to improve the workings of the Board.

**WRAP UP**

Moderator Bill Jeffery made two observations. First, the issues of water in California have not been fully resolved. And second, it is clear that more discussion is needed and will continue in various venues.

He thanked the panelists; Dean Parker and McGeorge for providing the venue; Margit, Jeff, and Rachael for organizing the panels; the student volunteers for their assistance; and most importantly the audience for their time, interest, and participation.