

Massive California Water Bond Slated for November 4 General Election as Proposition 1

2014 Water Bond targets state's long-term water needs and aquatic ecosystems.

Two months from today, the California electorate will vote up or down on a massive water bond which Governor Jerry Brown signed on August 13, 2014. The Water Quality, Supply, and Infrastructure Improvement Act of 2014 (the 2014 Water Bond) — if approved by a majority of the voters¹ in November — would provide US\$7.545 billion² in bond funding for water-related projects and programs throughout the state of California. The 2014 Water Bond received significant bipartisan support in the California Legislature and will appear on the November statewide ballot as Proposition 1.

Overview of 2014 Water Bond

The 2014 Water Bond would replace the \$11.14 billion bond that was drafted in 2009 (the 2009 Water Bond). The 2009 Water Bond was criticized as too large and included projects and earmarks that were neither cost-effective nor in the best interests of the state. By authorizing \$7.1 billion in general obligation bonds and repurposing \$425 million of existing unspent bonds,³ the 2014 Water Bond would make billions of dollars for a wide range of projects and programs, including:

- **\$2.7 billion** for water storage
- **\$1.495 billion** for watershed protection and restoration projects
- **\$900 million** for groundwater sustainability
- **\$810 million** for regional water reliability
- **\$725 million** for water recycling
- **\$520 million** for clean drinking water
- **\$395 million** for flood management

These allocations are described in greater detail below.

Apart from the overall size of the bond, major areas of policy debate resolved by the Legislature included: (1) the level of funding for programs and projects in the Sacramento-San Joaquin Delta (the Delta) and (2) the level of funding directed towards water storage.⁴

A “Tunnel Neutral” Water Bond

The interplay between the 2014 Water Bond and the Bay Delta Conservation Plan (BDCP) likely will evolve throughout this election cycle. The BDCP is a plan to improve — among other things — the reliability of the State Water Project and the Central Valley Project through the construction of two tunnels between the Sacramento River and existing south-of-Delta pumping facilities. However, the BDCP is

controversial, and the legislative history indicates that “tunnel neutrality” was key to the 2014 Water Bond’s almost unanimous passage.⁵

The drafters of the 2014 Water Bond attempted to develop a “tunnel neutral” bond by excluding funding for Delta conveyance facilities. The 2014 Water Bond’s general provisions specify that funds “shall not be expended to pay the costs of the design, construction, mitigation, operation or maintenance of Delta conveyance facilities.”⁶

The 2014 Water Bond would also provide Delta protections, including parameters regarding instream flow purchases.⁷ Language that would have explicitly prohibited the purchase of water for the Delta that could then be exported from the Delta was, however, not included in the 2014 Water Bond.

With regard to Delta safeguards, the 2014 Water Bond would allocate \$50 million to the Sacramento-San Joaquin Delta Conservancy for habitat enhancement, with the caveat that the funds “shall not be used to subsidize or decrease the mitigation obligations of any party.”⁸ Further, the Sacramento-San Joaquin Conservancy would be required to coordinate with the county or city in which a grant would be expended,⁹ a requirement that some have argued would provide the Delta community with a voice in every Delta habitat project.¹⁰ \$295 million would be allocated for Delta flood protection, including levee maintenance projects.

The 2014 Water Bond would provide \$200 million for administration by the Wildlife Conservation Board for projects that would result in enhanced stream flows, and another \$85 million to the Department of Fish and Wildlife for water quality, ecosystem restoration and fish protection facilities that benefit the Delta. Some groups anticipate this funding would be used to enhance the Delta’s upstream flow and thus increase the water available for conveyance through the tunnels.¹¹

On the other hand, some believe that the 2014 Water Bond might actually eliminate and/or reduce the demand for the twin tunnels.¹² Proponents of this perspective posit that funding for water storage and grants to local and regional water agencies might allow local and regional water agencies to capture and store more water, which in turn would reduce the Delta’s role in the state’s water supply and the financial incentive to construct the twin tunnels.

Responding to State Drought by Investing in State’s Water Infrastructure

Although the 2014 Water Bond would offer no short-term solution to the state’s drought problem (as legislating “rain” remains impossible), the bond may lessen the impact of future droughts by increasing the reliability of the state’s water supply. The Legislature has not passed a bond containing funding for water storage in the last 50 years; the 2014 Water Bond goes a long way in this respect.¹³ The bond would provide \$2.7 billion of funding for water storage projects, \$725 million for water recycling and \$900 million to clean up contaminated groundwater. Additional surface water storage through dam construction, either new or expanded reservoirs, or dedicated underground basin storage are steps towards alleviating the state’s long-term water supply concerns. But these projects would likely be years, if not decades, away.¹⁴

Among other provisions retained from the 2009 Water Bond, the 2014 Water Bond would provide a continuous appropriation¹⁵ of water storage funding to the California Water Commission (CWC). This governor-appointed, nine-member commission would decide which projects to fund with the \$2.7 billion appropriation through a competitive public process. Uncertainty regarding which projects the CWC would support is a concern for some that oppose further dam construction and other infrastructure projects considered unlikely to produce tangible environmental benefits.¹⁶

Other allocations in the 2014 Water Bond would be made available to various state agencies, boards, and other regional and local entities, including conservancies. These other proposed expenditures are described in greater detail below.

Major Elements of the 2014 Water Bond: Allocating the \$7.545 Billion

As outlined above, the proposed expenditures under the 2014 Water Bond may be summarized as follows:

- **\$2.7 billion** for water storage
- **\$1.495 billion** for watershed protection and restoration
- **\$900 million** for groundwater sustainability
- **\$810 million** for regional water reliability
- **\$725 million** for water recycling
- **\$520 million** for clean drinking water
- **\$395 million** for flood management

Each of these are discussed briefly below, from the largest to the smallest allocation.

\$2.7 Billion for Water Storage

The 2014 Water Bond would appropriate \$2.7 billion for water storage projects that are cost-effective and would provide a net improvement in ecosystem and water quality conditions.¹⁷ Eligible projects would include the following:

- Surface storage projects
- Groundwater storage projects
- Conjunctive use and reservoir operation projects
- Local and regional surface projects

The CWC would select projects through a competitive public process, ensuring that the public benefit cost share of funded projects does not exceed 50 percent of the funded project's total costs (except for conjunctive use and reservoir operation projects) and that ecosystem improvements are at least 50 percent of the total public benefit of the project. To obtain funding, a project must provide measurable improvement to either the Delta ecosystem or to Delta tributaries.

In allocating the \$2.7 billion, the 2014 Water Bond identifies the following public benefits that must be associated with funded water storage projects:

- Ecosystem improvements, including timing of water diversions, improvement in flow conditions and temperature
- Water quality improvements in river systems that provide significant public trust resources, including the Delta, or that clean up and restore groundwater resources
- Flood control benefits, including increases in flood reservation space in existing reservoirs
- Emergency response, including securing emergency water supplies and flows for dilution and salinity repulsion following a natural disaster or act of terrorism
- Recreational purposes

\$1.495 Billion for Watershed Protection and Restoration

The 2014 Water Bond would allocate \$1.495 billion for grants and loans for multibenefit ecosystem and watershed protection and restoration projects.¹⁸ The funded projects would be required to provide fisheries or ecosystem benefits greater than those required by applicable environmental mitigation measures or compliance obligations.

\$327.5 million of the \$1.495 billion would be allocated to local conservancies for projects as follows:

- **\$100.5 million** for State Coastal Conservancy
- **\$50 million** for Sacramento-San Joaquin Delta Conservancy
- **\$30 million** for the Ocean Protection Council
- **\$30 million** for San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy
- **\$30 million** for Santa Monica Mountains Conservancy
- **\$25 million** for Sierra Nevada Conservancy
- **\$17 million** for San Diego River Conservancy
- **\$15 million** for California Tahoe Conservancy
- **\$10 million** for Baldwin Hills Conservancy
- **\$10 million** for Coachella Valley Mountains Conservancy
- **\$10 million** for San Joaquin River Conservancy

The Sacramento-San Joaquin Delta Conservancy could use the \$50 million to purchase land for habitat improvements but, as discussed above, the funds could not subsidize or decrease the mitigation obligations of any party.¹⁹

Of the \$1.495 billion that would be available, the Wildlife Conservation Board would administer \$200 million for projects that would result in enhanced stream flows. \$100 million would be available for projects to protect urban creeks, and another \$20 million for a competitive program to fund multibenefit watershed and urban rivers enhancement projects. The Department of Fish and Wildlife would administer an additional \$87.5 million for projects that would specifically benefit the Delta. The Department of Fish and Wildlife would also administer another \$285 million for non-Delta watershed protection projects.

Significantly, the Natural Resources Agency would administer \$475 million for projects that would support state settlement obligations, including the San Joaquin River Restoration Settlement Act and the Central Valley Project Improvement Act.

\$900 Million for Groundwater Sustainability

The 2014 Water Bond would allocate \$900 million for grants or loans for projects that prevent or clean up groundwater contamination that serves or has served as a source of drinking water.²⁰ Projects would be prioritized based on specific criteria, including the following:

- Threat to groundwater
- Potential for the spreading of groundwater contamination
- Potential to enhance local water supply reliability
- Potential to recharge high-use groundwater basins
- Projects where courts or appropriate regulatory authorities have not identified responsible parties or where the responsible parties are unwilling or unable to pay for the total cost of cleanup

\$810 Million for Regional Water Reliability

The 2014 Water Bond would make \$810 million available for grants and loans to projects that are included and implemented in an adopted, integrated regional water management plan.²¹ Eligible projects would include the following:

- Projects that promote water reuse, water-use efficiency and conservation
- Local and regional surface and underground water storage projects
- Regional water conveyance facilities
- Watershed protection projects
- Storm water resource management projects
- Conjunctive use of surface and groundwater storage facilities
- Water desalination projects
- Support tools for regional water management strategies
- Projects that would improve water quality

Cost-sharing of not less than 50 percent of total project costs would be required, although this requirement could be waived for projects benefitting disadvantaged communities. Project applicants would be required to demonstrate how the proposed project would address regional risks to water supply and water infrastructure arising from climate change. In selecting among proposed projects in a watershed, priority would be given to plans that cover a greater portion of the watershed.

\$510 million of the \$810 million would be designated for grants and loans to the hydrologic regions identified in the California Water Plan. \$100 million would be available for grants and loans for urban water conservation and agricultural water management plans, projects and programs. \$200 million would be designated for grants and loans to multibenefit storm-water management projects, including green infrastructure, rainwater and storm-water capture projects, and storm-water treatment facilities.

\$725 Million for Water Recycling

The 2014 Water Bond would make \$725 million available for grants or loans for water recycling and advanced treatment technology projects, including water recycling projects, contaminant and salt removal projects (including desalination), infrastructure and potable reuse pilot projects.²² Similar to other funding categories, water recycling funding would require at least a 50 percent local cost share, which could be waived or reduced for disadvantaged communities and economically distressed areas.

In awarding competitive funding from the water recycling funds, the 2014 Water Bond would require consideration of a number of criteria, including the following:

- Water supply reliability improvement
- Water quality and ecosystem benefits related to decreased reliance on diversions from the Delta or instream flows
- Public health benefits from improved drinking water quality or supply
- Cost-effectiveness
- Energy efficiency and greenhouse gas emission impacts
- Reasonable geographic allocation to eligible projects throughout the state

\$520 Million for Clean Drinking Water

The 2014 Water Bond would allocate \$520 million for expenditures, grants and loans for projects that improve water quality or help provide clean, safe and reliable drinking water.²³ Among other goals, the funding would focus on addressing and preventing further contamination of drinking water supplies and

improving public drinking water infrastructure in disadvantaged communities. Projects for small community water systems and disadvantaged communities with impaired water would be given priority. The 2014 Water Bond would further prioritize shared solutions for multiple communities, if at least one is a disadvantaged community.

Half of the \$520 million would be deposited in the State Water Pollution Control Revolving Fund Small Community Grant Fund for grants for wastewater treatment projects, prioritizing projects that would serve disadvantaged and severely disadvantaged communities, and/or address public health hazards. The other half of the \$520 million would be available for grants and loans for public water system infrastructure improvements and related actions to meet safe drinking water standards and ensure affordable drinking water.

Both public water systems and public agencies would be eligible for funding. The 2014 Water Bond envisions at least a 50 percent local cost share, which could be waived or reduced for disadvantaged communities and economically distressed areas.

\$395 Million for Flood Management

The 2014 Water Bond would allocate \$395 million for grants and loans for statewide flood management projects and activities and, specifically, for multibenefit projects that enhance fish and wildlife habitat as well as public safety.²⁴ The Department of Water Resources would be instructed to coordinate this funding with the \$800 million allocated for flood control projects under Prop. 84 (2006) and the \$4.09 billion in general obligation bonds to repair flood control structures approved under Prop. 1E (2006). \$295 million of the \$395 million would be available for projects aimed at reducing the risk of levee failure and flood in the Delta.

Implications

A recent peer-reviewed article accepted for publication in the American Meteorological Society's *Journal of Climate* reports that the risk of prolonged drought in the American Southwest, including Southern California, is very high, with at least a 70 percent chance that a drought will last a decade and even a small possibility (five to 10 percent) of a persistent "megadrought" lasting half a century.²⁵ In the midst of this historic drought and predictions in learned journals that such conditions might prevail for many years, Californians could face a historic decision as they go to vote in the November 4 election on Proposition 1, a bond measure intended to improve the reliability and security of the state's water supplies.

A compromise measure from the 2009 Water Bond, the 2014 Water Bond still would provide funds for investments in the state's water infrastructure, as well as for projects that would restore and clean up the state's water systems; including water recycling, safe drinking water, water conservation and watershed protection. Against the backdrop of one of the state's most severe droughts on record, the bond's bipartisan supporters must now persuade the electorate that approximately \$7 billion in new debt is a prudent investment.

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- ¹ Cal. Const., art. 2, § 10 (providing that a statewide ballot measure can be approved by a majority vote of the people).
- ² All monetary values in US\$.
- ³ Assem. Bill No. 1471, approved by Governor, Aug. 13, 2014, (2013-2013 Reg. Sess.) Stats. 2014, ch. 188, p. 2.
- ⁴ Assem. Floor Analyses, Assem. Conc. Sen. Amends. to Assem. Bill. No. 1471 (2013-2014 Reg. Sess.) Aug. 13, 2014, p. 5.
- ⁵ The 2014 Water Bond passed 77-2 in the State Assembly and 37-0 in the Senate. See Sen. Floor on Assem. Bill No. 1471 (2013-2014 Reg. Sess.), as the vote record showed; Assem. Floor on Assem. Bill No. 1471 (2013-2014 Reg. Sess.), as the vote record showed.
- ⁶ Assem. Bill No. 1471, approved by Governor, Aug. 13, 2014, (2013-2013 Reg. Sess.) Stats. 2014, ch. 188, p. 9.
- ⁷ Assem. Floor Analyses, Assem. Conc. Sen. Amends. to Assem. Bill. No. 1471 (2013-2014 Reg. Sess.) Aug. 13, 2014, pp. 6-8.
- ⁸ Assem. Bill No. 1471, approved by Governor, Aug. 13, 2014, (2013-2013 Reg. Sess.) Stats. 2014, ch. 188, p. 9.
- ⁹ *Id.*
- ¹⁰ Lois Wolk, Viewpoint, *Water Bond Compromise is a Good Deal for Delta*, SACRAMENTO BEE, Aug. 19, 2014, <http://www.sacbee.com/2014/08/19/6637288/viewpoints-water-bond-compromise.html>.
- ¹¹ Press Release, Restore the Delta, Tunnels Opponents: Gov. Brown's Water Bond will be a Referendum on Tunnels: Not "Tunnels Neutral," Charging Taxpayers \$485 Million to Buy Water for Tunnels is "Nuts," Shift of Burden to Public "Illegal" (Aug. 13, 2014), <http://restoredelta.org/blog/>; see also Reid Wilson, *California Will Vote on Multi-Billion Dollar Water Bond*, WASH. POST, Aug. 14, 2014, <http://www.washingtonpost.com/blogs/govbeat/wp/2014/08/14/california-will-vote-on-multi-billion-dollar-water-bond/> (noting that the Sierra Club and the Planning and Conservation League had criticized the bond's allocation of funding for water purchases).
- ¹² Dan Walters, *New Water Bond Could Make Delta Tunnels Unnecessary*, SACRAMENTO BEE, Aug. 17, 2014, <http://www.sacbee.com/2014/08/17/6633604/dan-walters-new-water-bond-could.html>.
- ¹³ Wayne Lusvardi, *Legislature Passes First Water Storage Bond in 50 Years*, CALWATCHDOG.COM, Aug. 14, 2014, <http://calwatchdog.com/2014/08/14/legislature-passes-first-water-storage-bond-in-50-years/>.
- ¹⁴ Fenit Nirappil, *California Water Bond Won't be a Drought-Buster*, AP, Aug. 16, 2014, available at <http://www.rqj.com/story/news/2014/08/16/california-water-bond-drought-buster/14181007/> (last visited Sept. 4, 2014).
- ¹⁵ A continuous appropriation means that the funds are not subject to the annual legislative process and will thus go directly to the CWC for eligible projects. See Dept. of Fin., *Glossary of Budget Terms*, http://www.dof.ca.gov/html/bud_docs/glossary.pdf (last visited Aug. 20, 2014).
- ¹⁶ Steve Evans, *Viewpoints, Deadbeat Dam Projects Shouldn't be Part of Water Bond*, SACRAMENTO BEE, Aug. 12, 2014 <http://www.sacbee.com/2014/08/12/6621082/viewpoints-deadbeat-dam-projects.html>.
- ¹⁷ Assem. Bill No. 1471, approved by Governor, Aug. 13, 2014, (2013-2013 Reg. Sess.) Stats. 2014, ch. 188, pp. 21-25.
- ¹⁸ *Id.* at pp. 13-17.
- ¹⁹ *Id.* at p. 9.
- ²⁰ *Id.* at pp. 26-27.
- ²¹ *Id.* at pp. 18-21.
- ²² Assem. Bill No. 1471, approved by Governor, Aug. 13, 2014, (2013-2013 Reg. Sess.) Stats. 2014, ch. 188, pp. 25-26.
- ²³ *Id.* at pp. 11-13.
- ²⁴ *Id.* at p. 28.
- ²⁵ Toby R. Ault, Julia E. Cole, Jonathan T. Overpeck, Gregory T. Pederson, and David M. Meko, *Assessing the Risk of Persistent Drought Using Climate Model Simulations and Paleoclimate Data*, J. CLIMATE (2014) (forthcoming) (revised manuscript at 19) (on file with authors).