

**SENATE COMMITTEE ON NATURAL RESOURCES AND WATER**  
**Senator Fran Pavley, Chair**  
**2013-2014 Regular Session**

**BILL NO:** AB 1331

**AUTHOR:** Rendon

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**DUAL REFERRAL:** Environmental Quality

**SUBJECT:** Clean, Safe and Reliable Drinking Water Act of 2014

**HEARING DATE:** March, 25, 2014

**URGENCY:** Yes

**CONSULTANT:** Dennis O'Connor

**FISCAL:** Yes

**BACKGROUND AND EXISTING LAW**

In November 2009, the legislature passed and the governor signed SBX7 2 (Cogdill). Also known as the Safe, Clean, and Reliable Drinking Water Supply Act of 2010, that law placed on the November 2010 ballot an \$11.14 B general obligation bond before the voters to fund various water resources programs and projects.

The legislature has amended the bond proposal three times, including twice delaying the placement of the bond before the voters. After initially being delayed to the November 2012 ballot, the bond was subsequently delayed to the November 2014 ballot, where it remains now.

Over the course of the last year or two, there has been much discussion on whether the public would support the current November 2014 bond proposal. Moreover, if the voters would not support that bond proposal, what, if anything, should take its place on the ballot?

To help answer those questions, this Committee held a joint hearing in February with the Senate Governance and Finance Committee titled "Overview of California's Debt Condition: Priming the Pump for a Water Bond." That hearing explored California's overall debt condition, the fund balances for various bond funded programs, and the implications for the November 2014 water bond.

This was followed two weeks later by a second hearing which asked the question "What's Changed Since the Legislature Passed the Safe, Clean, and Reliable Drinking Water Supply Act of 2010?" That hearing highlighted some of the unanticipated developments that occurred since the drafting of the bond, and posed the policy question "What changes, if any, should be made to the bond in light of recent developments?"

Later, on September 24, 2013, the Senate Environmental Quality and the Natural Resources and Water held a joint hearing titled "Setting the Stage for a 2014 Water Bond: Where Are We and Where Do We Need To Go?" That hearing focused on where the various legislative bond discussions stood, identified issues that may need additional attention, and, where appropriate, suggested alternative approaches for consideration of the members.

## PROPOSED LAW

This bill would replace the \$11.14 B water bond that is currently on the November 2014 ballot with a new \$8.0 B general obligation bond titled “The Clean, Safe, and Reliable Drinking Water Act of 2014.”

The proposed bond measure is organized as follows:

	Chapter 1. Short Title
	Chapter 2 Findings
	Chapter 3. Definitions
	Chapter 4. General Provisions
\$1,000 M	Chapter 5. Clean and Safe Drinking Water
1,500	Chapter 6. Protecting Rivers, Lakes, Streams, Coastal Waters, and Watersheds
2,000	Chapter 7. Climate Change & Drought Preparedness for Regional Water Security
1,000	Chapter 8. Sacramento-San Joaquin Delta Sustainability
2,500	Chapter 9. Water Storage for Climate Change
	Chapter 10. Fiscal Provisions
<hr/>	
\$8,000 M	

Chapter 5. Clean and Safe Drinking Water. This chapter would authorize \$1,000 M in funding for projects that improve water quality for beneficial use. This chapter would require:

- Projects be selected by a competitive grant or loan process.
- Applicants for projects to clean up groundwater aquifers to demonstrate that a public agency has authority to manage the water resources in that aquifer in order to be eligible for funding pursuant to this chapter.
- A local cost share of not less than 50 percent of the total costs of the project. The cost-sharing requirement could be waived or reduced for projects that directly benefit a disadvantaged community or an economically distressed area.
- At least 10 percent of the funds available pursuant to this chapter would be required to be allocated for projects serving severely disadvantaged communities.
- Funding authorized pursuant to this chapter would be required to include funding for technical assistance to disadvantaged communities.

Funds provided by this chapter would be available as follows:

\$400 M for deposit in the State Water Pollution Control Revolving Fund Small Community Grant Fund for grants for wastewater treatment projects. Priority would be given to projects that serve disadvantaged communities and severely disadvantaged communities, and to projects that address public health hazards.

100 M deposit in the Emergency Clean Water Grant Fund for grants and direct expenditures to finance public health emergencies and urgent actions to ensure that safe drinking water supplies are available to all Californians. Eligible projects include, but are not limited to, the following:

- Providing interim water supplies, including bottled water.
- Projects that improve or replace existing water systems, provide other sources of safe drinking water, including replacement wells, and prevent contamination.
- Establishing connections to an adjacent water system.
- The design, purchase, installation, and initial operating costs for interim water treatment equipment and systems.

The administering entity may expend up to \$10 M for grants and loans to address the water quality needs of private well owners that have no other source of funding and serve members of a disadvantaged community.

- 400 M for grants and loans for public water system infrastructure improvements and related actions to meet safe drinking water standards, ensure affordable drinking water, or both.
- Priority would be given to projects for small community water systems or state small water systems in disadvantaged communities whose drinking water source is impaired by chemical and nitrate contaminants and other health hazards identified by the implementing agency.
  - The implementing agency could make grants to finance feasibility studies and to meet the eligibility requirements for a construction grant.
  - Eligible expenses could include initial operation and maintenance costs for systems serving disadvantaged communities.
  - Special consideration would be given to projects that provide shared solutions for multiple communities served by a small community water system, state small water system, or a private well.
  - Construction grants would be limited to \$5 M per project, except that the implementing agency may set a limit of not more than \$20 M for projects that provide regional benefits or are shared among multiple entities.
  - Not more than 25 percent of a grant could be awarded in advance of actual expenditures.
  - The administering entity could expend up to \$25 M of the funds for technical assistance to eligible communities.

- 100 M for improving groundwater quality, including the costs of planning, design, and construction of improvements necessary to resume delivery of safe drinking water.

Chapter 6. Protecting Rivers, Lakes, Streams, Coastal Waters, and Watersheds. This chapter would authorize \$1,500 M in funding for expenditures and grants for multibenefit ecosystem and watershed protection and restoration projects in accordance with statewide priorities.

To guide the expenditure of funds described in this chapter:

- The Natural Resources Agency (NRA) would be required to develop a statewide natural resource protection plan to identify priorities consistent with the purposes of this section. All expenditures by state conservancies and state agencies of funds described in this section would be required advance the priorities set forth in the statewide natural resource protection plan. The plan would aggregate and coordinate existing state planning efforts, and would be completed within one year of voter approval of the bond.
- State conservancies expending funds provided from this subdivision would be required to provide biannual written reports to NRA on expenditures made and how those expenditures advance the statewide priorities set forth in the NRA statewide natural resource protection plan.
- The NRA would produce and make available to the public biannual written reports on total expenditures made and progress toward meeting statewide priorities.

Funds provided by this chapter would be available as follows:

- \$750 M would be distributed to regions pursuant to a specific schedule. The schedule is based on each region receiving \$10 M, the balance of the funds were distributed to each region based on population, with priorities for those funds as follows:
  - \$76 M North Coast – priority for protection and restoration of anadromous fish and coastal watersheds.
  - 109 M San Francisco Bay – priority for protection and restoration of regional watersheds or watersheds that provide water supply to the region.
  - 109 M Sierra Nevada and Cascade Range – priority for protection and restoration of watersheds that provide water to the statewide water system.
  - 76 M Central Coast – priority for protection of coastal resources.
  - 76 M Central Valley, excluding the Delta – no priorities specified.
  - 142 M Los Angeles/Ventura – priority for protection, restoration, and connectivity of the Los Angeles or San Gabriel Rivers and their tributaries.
  - 76 M Santa Ana Watershed – priority for protection and restoration of the Santa Ana Watershed or groundwater resources.
  - 76 M San Diego – priority for protection and restoration of the region’s watersheds.
  - 10 M Lahontan/Colorado River – priority for protection and restoration of the region’s watersheds and wetland resources.

A state agency that receives any of these funds would be authorized to disburse funding to a nonprofit organization before the organization has incurred expenses for the project.

- 500 M to fulfill the obligations of the State of California in complying with the terms of any of the following:
  - The February 18, 2010, Klamath Basin Restoration Agreement or Klamath Hydroelectric Settlement Agreement.
  - The Quantification Settlement Agreement.
  - The San Joaquin River Restoration Settlement.
  - Refuge water supply acquisition pursuant to the Central Valley Project Improvement Act.
  - The Tahoe Regional Planning Compact.

- 250 M to the Natural Resources Agency to support projects of a state conservancy, excluding the Delta Conservancy, as provided in the conservancy’s strategic plan.

Chapter 7. Climate Change and Drought Preparedness for Regional Water Security. This chapter would authorize \$2,000 M in funding for expenditures and grants for expenditures and competitive grants and loans to projects that respond to climate change and contribute to regional water security.

The purposes of this chapter would be to:

- Help water infrastructure systems adapt to climate change.
- Provide incentives for water agencies throughout each watershed to collaborate in managing the region’s water resources and setting regional priorities for water infrastructure.

- Improve regional water self-reliance, including projects that reduce future reliance on the Delta watershed in meeting California’s future water supply needs, consistent with Section 85021.
- Fund the increment of project costs, up to 50% of the project’s total costs, related to the project’s public benefits.

A project’s public benefits would be defined as the following:

- Any regional self-reliance improvement to meet water supply needs.
- Any net improvement to public trust resources, including the conservation of species listed as endangered or threatened under the California or federal Endangered Species Acts.

Eligible projects include:

- Water reuse and recycling for non-potable reuse and direct and indirect potable reuse.
- Water-use efficiency and water conservation.
- Local and regional surface and underground water storage, including groundwater aquifer cleanup or recharge projects.
- Regional water conveyance facilities that improve integration of separate water systems.
- Watershed protection, restoration, and management projects, including projects that reduce the risk of wildfire or improve water supply reliability.
- Stormwater resource management.
- Conjunctive use of surface and groundwater storage facilities.
- Water desalination projects.
- Decision support tools to model regional water management strategies to account for climate change and other changes in regional demand and supply projections.

The following are ineligible for grants from this chapter:

- An urban water supplier that does not prepare, adopt, and submit its urban water management plan in accordance with the Urban Water Management Planning Act, unless and until the urban water supplier complies with that act.
- An agricultural water supplier that does not prepare, adopt, and submit its agricultural water management plan in accordance with the Agricultural Water Management Planning Act, unless and until the agricultural water supplier complies with that act.
- A local agency that does not prepare, adopt, and submit its groundwater management plan in accordance with what is commonly known as AB 3030, unless and until the plan is prepared and submitted in accordance with the requirements of that part. The groundwater management plan requirement would not apply to a water replenishment district or to a local agency that serves or has authority to manage an adjudicated groundwater basin.

Other provisions include:

- In selecting among proposed projects in a watershed, the scope of the adopted integrated regional water management plan could be considered, with priority going to projects in plans that cover a greater portion of the watershed. If a plan covers substantially all of the watershed, then the plan’s project priorities would be given deference.
- An applicant would be required to demonstrate that the integrated regional water management plan the applicant’s project implements addresses the risks in the region to water supply and water infrastructure arising from climate change.
- A cost share from nonstate sources of not less than 50 percent of the total costs of the project would be required. The cost sharing requirement may be waived or reduced for projects that directly benefit a disadvantaged community or an economically distressed area.

- Not less than 10 percent of the funds authorized by this chapter would be allocated to projects that directly benefit disadvantaged communities.
- Projects that achieve multiple benefits would receive special consideration.

Funds would be allocated as follows:

\$1,000 M would be distributed to regions pursuant to a specific schedule. The schedule is based on \$35 M to each area, the balance distributed by population per the 2000 Census.

250 M for direct expenditures, grants, and loans for urban and agricultural water conservation and water use efficiency plans, projects, and programs. Of these funds, \$100 M would be dedicated for improving on-farm water use efficiency. Projects would not be required to comply with the requirements of the Integrated Regional Water Management Planning Act.

500 M for grants and low interest loans for water recycling and advanced treatment technology projects. Eligible projects would be required to implement a plan or strategy by one or more regional water agencies or integrated regional water management groups to incorporate water recycling into the region's water supplies.

Half of the funds would be allocated to a low interest loan program.

Eligible projects would include:

- Water recycling projects, including, but not limited to, treatment, storage, conveyance, and distribution facilities for potable and nonpotable recycling projects.
- Contaminant and salt removal projects, including, but not limited to, groundwater and seawater desalination, and associated treatment, storage, conveyance, and distribution facilities.
- Dedicated distribution infrastructure to serve residential, agricultural, commercial, and industrial end-users to allow the use of recycled water.
- Pilot projects for new salt and contaminant removal technology.
- Groundwater recharge infrastructure related to recycled water.
- Water supply reliability improvement for critical urban water supplies in designated superfund areas with groundwater contamination listed on the National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).
- Technical assistance and grant writing assistance for disadvantaged communities.

Projects would be selected on a competitive basis, considering all the following:

- Regional 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.
- Cost effectiveness.
- Energy efficiency and greenhouse gas emission impacts.
- Reasonable geographic allocation to eligible projects throughout the state.

Projects would not need to comply with the Integrated Regional Water Management Planning Act.

250 M for grants and loans for multibenefit stormwater management projects.

Would establish as policy of the State of California that stormwater be managed for water supply benefits to the maximum extent possible, in conjunction with other benefits that effective stormwater management may provide. Funding for stormwater management would be required to be drawn from federal, state, regional, and local agency resources, to the extent available.

Eligible projects could include green infrastructure, rainwater and stormwater capture projects, and stormwater treatment facilities. Development of plans for stormwater projects would be required to address the entire watershed and incorporate the perspectives of communities adjacent to the affected waterways, especially disadvantaged communities.

Chapter 8. Sacramento-San Joaquin Delta Sustainability. This chapter would provide \$1,000 M for grants and direct expenditures to fund public benefits associated with projects needed to assist in the Delta's sustainability as a vital resource for fish, wildlife, water quality, water supply, agriculture, and recreation. Funds would be allocated as follows:

\$400 M to maintain and improve existing Delta levees. These funds could be used for any of the following:

- Local assistance under the Delta levee maintenance subventions program.
- Special flood protection projects.
- Levee improvement projects that increase the resiliency of levees within the Delta to withstand earthquake, flooding, or sea level rise.
- Emergency response and repair projects.

600 M to protect, restore, and enhance the Delta ecosystem and to promote the sustainability of the Delta. These funds could be used for any of the following:

- Projects to protect and restore native fish and wildlife dependent on the Delta ecosystem, including improvement of aquatic or terrestrial habitat or the removal or reduction of undesirable invasive species.
- Projects to reduce greenhouse gas emissions from exposed Delta soils.
- Scientific studies and assessments that support the projects authorized under this section.

Chapter 9. Water Storage for Climate Change. This chapter would provide \$2,500 M to the California Water Commission for expenditures, competitive grants, and loans for public benefits associated with projects that expand the state's water storage capacity, as follows:

- \$500 M would be appropriated by this act in each fiscal year from 2015–16 to 2019–20, unless the moneys in the fund are exhausted (see next bullet).
- The Legislature may augment the appropriations in any year until the funds are exhausted.
- Appropriated funds would be available for encumbrance for three years. Funds not encumbered within three years would revert to the fund.
- The Legislature would retain authority and responsibility for oversight of the commission and expenditure of the funding authorized by this chapter.

The purposes of this chapter would be to:

- Construct new surface water storage projects.
- Restore and expand groundwater aquifer storage capacity.
- Restore water storage capacity of existing surface water storage reservoirs.
- Remediate or prevent contamination of groundwater aquifers.
- Construct and expand stormwater retention facilities.

Funds may be expended solely for the following public benefits:

- Ecosystem improvements, including changing the timing of water diversions, improvement in flow conditions, temperature, or other benefits that contribute to restoration of aquatic ecosystems and native fish and wildlife.
- Water quality improvements that provide significant public trust fish and wildlife resources, or that clean up and restore groundwater resources.
- Flood control benefits, including, but not limited to, increases in flood reservation space in existing reservoirs by exchange for existing or increased water storage capacity in response to the effects of changing hydrology and decreasing snow pack on California's water and flood management system.
- Regional water storage benefits for more than one drinking water supplier or more than three million people.
- Emergency response, including but not limited to, securing emergency water supplies and flows for dilution and salinity repulsion following a natural disaster or act of terrorism.

The commission, in consultation with the DFW, SWRCB, and DWR, would be required to develop and adopt, by regulation, methods for quantification and management of public benefits by December 15, 2015. The regulations would be required to include the priorities and relative environmental value of ecosystem benefits as provided by DFW and the priorities and relative environmental value of water quality benefits as provided by the SWRCB.

The public benefit cost share of a project would be limited to 50 percent of the total costs of the project.

A project in the Delta watershed or an area that receives water from the Delta watershed could not be funded pursuant to this chapter unless it provided measurable improvements to the Delta ecosystem or to the Delta watershed.

Projects eligible for funding of the public benefits would consist of only the following:

- Surface storage projects identified in the CALFED Bay-Delta Programmatic Record of Decision, excluding projects at Lake Shasta.
- Groundwater storage projects and groundwater contamination prevention or remediation projects that provide water storage benefits.
- Conjunctive use and reservoir reoperation projects.
- Local and regional surface storage projects that improve the operation of water systems in the state and provide public benefits, including reservoirs to store recycled water.
- Projects that remove sediment, improve dam stability in seismic events, or otherwise restore water storage capacity in existing water storage reservoirs.

Except completion of environmental documentation and permitting of a project, no funds could be allocated for a project until the commission has approved the project based on the commission's determination that all of the following have occurred:

- The commission has adopted the regulations quantification and management of public benefits and the commission has specifically quantified and made public the cost of the public benefits associated with the project.
- DWR has entered into a contract with each party that will derive benefits from the project that ensures the party will pay its share of the total costs of the project. The benefits available to a party would be required to be consistent with that party's share of total project costs.
- DWR has entered into a contract with each public agency that administers the public benefits, after that agency makes a finding that the public benefits of the project for which that agency is responsible meet all the requirements of this chapter, to ensure that the public contribution of funds pursuant to this chapter achieves the public benefits identified for the project.
- The commission has held a public hearing for the purposes of providing an opportunity for the public to review and comment on the information required to be prepared pursuant to this subdivision.
- The project feasibility studies have been completed.
- The commission has found and determined that the project is feasible, is consistent with all applicable laws and regulations, and, if the project is in the Delta watershed or an area that receives water from the Delta watershed, will advance one or more of the policy objectives specified in the Delta Reform Act.
- All environmental documentation associated with the project has been completed, and all other federal, state, and local approvals, certifications, and agreements required to be completed have been obtained.

In order to receive funding authorized by this chapter to improve groundwater storage in an aquifer, the applicant would be required to demonstrate that a public agency has authority to manage the water resources in that aquifer.

Funds could not be expended for the costs of environmental mitigation measures or compliance obligations.

A project would not be eligible for funding under this chapter unless, by January 1, 2018, all of the following conditions are met:

- All feasibility studies are complete and draft environmental documentation is available for public review.
- The commission makes a finding that the project is feasible, and will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses.
- The director receives commitments for not less than 75 percent of the nonpublic benefit cost share of the project.

Funding authorized by this chapter could not be used to pay any share of the costs of remediation attributed to parties responsible for the contamination of a groundwater storage aquifer, but may be used to pay costs that cannot be recovered from responsible parties. Parties that receive funding for remediating groundwater storage aquifers would be required to exercise their best efforts to recover the costs of groundwater cleanup from the parties responsible for the contamination.

Projects that leverage funding from local agencies and responsible parties to the maximum extent possible would receive priority consideration in groundwater storage project selection.

### Other Provisions of the Bond:

- No more than 5 percent of the funds allocated for a program could be used to pay the administrative costs of that program.
- Up to 10 percent of funds allocated for each program could be used to finance planning and monitoring necessary for the successful design, selection, and implementation of the projects authorized under that program.
- Water quality monitoring data would be required to be collected and reported to the State Water Resources Control Board (Board) consistent with the Boards surface water monitoring data systems or groundwater monitoring data systems.
- Watershed monitoring data would be required to be collected and reported to the Department of Conservation consistent with the Department's statewide watershed program data system.
- Each state agency administering a bond funded competitive grant program would be required to develop project solicitation and evaluation guidelines. The guidelines could include a limitation on the dollar amount of grants to be awarded. If the state agency previously has developed and adopted project solicitation and evaluation guidelines that comply with the requirements of this bond, it could use those guidelines.
- Exempts all bond funded programs, except those funded by Chapter 9. Water Storage for Climate Change, from Administrative Law review of guidelines, funding criteria, etc.
- Establishes the intent of the people that:
  - The investment of public funds pursuant to this division will result in public benefits that address the most critical statewide needs and priorities for public funding.
  - Beneficiaries pay for the benefits they receive from projects funded from this bond.
  - Priority would be given to projects that leverage private, federal, or local funding or produce the greatest public benefit.
  - In making decisions regarding water resources, state and local water agencies use the best available science to inform those decisions.
  - Special consideration be given to projects that employ new or innovative technology or practices, including decision support tools that support integration of multiple jurisdictions, including, but not limited to, water supply, flood control, land use, and sanitation.
  - Evaluation of projects considered for funding pursuant to this division would be required to include review by professionals in the fields relevant to the proposed project.
  - To the extent practicable, a project supported by funds made available by this division would be required to include signage informing the public that the project received funds from the Clean and Safe Drinking Water Act of 2014.
- The State Auditor would be required to conduct an annual programmatic review and an audit of expenditures from the fund. The State Auditor would report its findings annually on or before March 1 to the Governor and the Legislature, and would make the findings available to the public.
- The Legislature would be authorized to enact legislation necessary to implement programs funded by this measure.
- Bond funds may not be expended to support or pay for the costs of environmental mitigation measures except as part of the environmental mitigation costs of projects financed by this bond. Funds provided by this division may be used for environmental enhancements or other public benefits.
- Bond funds may not be expended for the acquisition or transfer of water rights except for a dedication of water for environmental purposes.
- Funds provided by this division could not be expended to pay the costs of the design, construction, operation, mitigation, or maintenance of Delta conveyance facilities. Those

costs would be the responsibility of the water agencies that benefit from the design, construction, operation, or maintenance of those facilities.

- Eligible applicants would be public agencies, public utilities, federally recognized Indian tribes, state Indian tribes listed on the Native American Heritage Commission’s California Tribal Consultation List, and nonprofit organizations. A public agency could use funding authorized by this division to benefit recipients of water from mutual water companies that operate a public water system if the funding provides public benefits. To be eligible for funding under this division, a project proposed by a public utility would be required to have a clear and definite public purpose, benefit its customers, and comply with Public Utilities Commission rules on government funding for public utilities.
- Projects funded pursuant to this division may use the services of the California Conservation Corps or certified community conservation corps.
- Each state agency that receives an appropriation of funding made available by this division would be responsible for establishing metrics of success and reporting the status of projects and all uses of the funding on the state’s bond accountability Internet Web site, as provided by statute.

### **ARGUMENTS IN SUPPORT**

According to the author, “The proposed 2009 Water Bond now on the November 2014 ballot has been criticized by editorials and pundits for its “pork.” That bond’s \$1.785 billion section on “Conservation and Watershed Protection” includes many earmarks, to specific agencies for specific purposes. Those 23 earmarks (and 8 subsidiary earmarks) include such projects as “watershed education centers” for cities larger than one million people.”

“AB 1331 was crafted – and continues to evolve – as a product of the most ethical, inclusive and transparent process ever applied to a state water bond by the Legislature. The process that has spanned nearly a year included convening 14 public hearings (3 in the Assembly; 2 in the Senate; and 9 regional hearings across the state)”.

“Specifically, the \$8 Billion Assembly Water Bond (AB 1331) proposal includes:

- NO Earmarked Projects [Pork Free].
- \$1 Billion for maintaining and improving Drinking Water Quality.
- \$1.5 Billion for protecting Rivers & Watersheds.
- \$2 Billion to fund integrated regional water management that will improve water delivery and help regions reduce the impact of climate change on water supply.
- \$1 Billion to protecting The California Delta that is critical to the state water supply system and a key ecological resource.
- \$2.5 Billion for Water Storage projects that will also reduce the impact of climate change on clean, reliable and affordable water supply.”

“State water infrastructure projects and conservation programs will be without funding for more than 3 years if we don’t pass a water bond this year.”

A coalition of 30 urban forestry related NGOs particularly support the provision in the watershed portion of the bond that “Promote[s] urban forestry pursuant to the Urban Forest Act of 1978.”

### **ARGUMENTS IN OPPOSITION**

Few organizations officially oppose AB 1331. That said, many groups raise objections to one aspect of AB 1331 or another; objections of one group often conflict with those of another.

ACWA, which does officially oppose AB 1331, argues that the bond should have more funds for Delta sustainability, similar to that in the current 2014 bond, and that storage funds should be continuously appropriated to the California Water Commission.

Monterey Peninsula Water Management District, though not officially opposed, finds AB 1331 “does not meet the needs of the Monterey Peninsula and fails to adequately address the needs of isolated coastal communities in general.”

Other issues raised by critical though not officially opposed organizations include:

- Insufficient/too much funding in specific categories.
- Lack of legislative appropriation of storage funds.
- Lack of identifying which conservancies will receive what amount of funds.
- Concerns that recent amendments may revive the old “environmental water account.”

## COMMENTS

### *AMENDMENTS REQUIRED TO RESOLVE FUNDAMENTAL ISSUES*

A. *Identifying Agencies.* Previous resources bonds have, for most of the programs authorized by those bonds, designated which specific state agency would be responsible for managing and disbursing the funds for each program. This practice has been continued both in the current 2014 bond and in the other water bonds introduced this year. In contrast, AB 1331 has generally *not* designated which specific state agency would be responsible for managing and disbursing funds for each program. This would mean such decisions would need to be resolved through the annual budget process.

From a practical perspective, this means each year the Governor would propose which state agency would manage the bond funds appropriated that year, placing the Legislature in a purely reactive stance.

Additionally, not designating in the bond which agency is to manage the bond program imposes administrative challenges on the program managing agencies as well. If, for example, the State Water Board knew that it would manage the entire \$500 M proposed for the water recycling program, it could at the outset plan on having, say, one round of planning grants and two rounds of projects grants. It could also work with the stakeholder community to tentatively plan the timing of those grant cycles.

Similarly, conservancies often work on very long timelines. Knowing that a set amount of funds would be available over time allows them to more effectively plan their acquisition and restoration activities.

AMENDMENT A amends the bill as follows:

- Designates specific agencies to receive and manage funds for each bond funded program authorized in this bill, consistent with existing program authorities and practice.
- For Chapter 6 regarding watershed activities, changes the funding from a regional allocation to specific allocations to the various state conservancies, Wildlife Conservation Board, and Ocean Protection Council, in rough proportion to that in SB 848 as it passed out of this committee.
- For Chapter 7 regarding regional water security, designates DWR to manage the regional program, with project awards to be made in collaboration with the State Water Board.

- B *Continuous Appropriation.* Previous versions of this bill provided that funds for water storage projects would be continuously appropriated to the California Water Commission. As noted in the committee background for our September 25, 2013 informational hearing, continuous appropriations eliminate one of the Legislature’s key checks on the powers of the executive branch, namely, the power to appropriate funds.

Recent amendments eliminated the continuous appropriation, but not in a way that restores the Legislature’s check on the executive branch. Instead of having the funds continuously appropriated to the Water Commission, the storage funds are appropriated directly by this bond. That is, they are not subject to appropriation by the legislature.

AMENDMENT B amends the bill as follows:

- Makes all bond funds, including those authorized for water storage projects, subject to appropriation by the Legislature.

- C *Regional Watershed* – Who put the Natural Resources Agency (NRA) in charge? This bill proposes that the NRA develop a statewide natural resource protection plan, and further requires all conservancies and agencies expending watershed fund provide by this bond to advance the priorities set forth in that plan.

Since at least the Wilson administration, Secretaries of NRA have wanted to exert more influence on the operations of the state’s many conservancies and related agencies. To date, they have received little if any Legislative support in their efforts. This is in large part because the Legislature created most conservancies because the local or regional citizenry believed they were being ill-served by programs run out of Sacramento. In response, the Legislature has created a number of conservancies and other agencies to develop and run regional watershed and resource conservation programs to reflect the regions’ priorities. Indeed, one of the reasons Conservancies are supported by local citizenry is because there are usually a large number of locally appointed representatives on the conservancies’ boards.

If it is in fact desirable to create a more centralized structure for overseeing conservancies, a policy bill would be a more appropriate vehicle.

AMENDMENT C amends the bill as follows:

- Deletes the requirement for the NRA to develop a statewide natural resource protection plan.

- D *Regional Watershed* – What’s wrong with regional priorities being developed regionally? This bill makes numerous references to conservancies expending funds consistent with undefined statewide priorities. As noted above, one of the main reasons for having regional conservancies was so their programs and projects would reflect regional priorities.

AMENDMENT D amends the bill as follows:

- Deletes references to statewide priorities in Chapter 6 and instead authorizes funds to be used for “projects that protect and improve California watersheds, wetlands, forests, and floodplains.”
- Deletes the requirement for conservancies to provide biennial reports to the NRA regarding how expenditures conform to statewide priorities.

## *AMENDMENTS REQUIRED TO SOLVE POLICY CONCERNS*

E *Compliance.* The background observed that while each bond proposal made grants contingent on complying with specific statutes, proposals were not consistent regarding which statutes are prerequisite. This measure does not require DWR to *certify* that IRWMP applicants are compliant with the Urban Water Management Planning Act, Agricultural Plans, or Groundwater Management plan requirements. Instead, DWR would likely continue its current practice of having agencies self-certify that they are compliant.

While this may seem efficient, committee staff is aware of a number of instances where agencies have in fact not been fully compliant with statutory requirements and yet received bond funds. Staff of the Delta Stewardship Council have made similar observations. If a requirement is important enough for the Legislature to put it in statute, it is important enough for the bond managing agencies to ensure full compliance with that statute.

AMENDMENT E amends the bill as follows:

- Adds a requirement that DWR certify that IRWMP applicants are compliant with the Urban Water Management Planning Act, Agricultural Plans, or Groundwater Management Plan requirements, as appropriate.
- Makes other technical and conforming changes to the bill regarding compliance with existing statutes.

F *Regional Watershed* – Multibenefit watershed projects for water supply and other purposes? This bill proposes to provide \$250M to the NRA for projects to support projects consistent with a conservancy’s strategic plan. This is in addition to the other funds provided to conservancies by this bond. Instead of providing the NRA with money to fund more of the same types of projects the conservancies were likely to fund anyway, it might make more sense for a *water bond* to provide a competitive pot of funds for multibenefit projects that provide water supply and other benefits.

AMENDMENT F amends the bill as follows:

- Amends the provisions providing \$250 M to the NRA for projects to support projects consistent with a conservancy’s strategic plan to instead create a competitive pot of funds for multibenefit projects that provide water supply and other benefits.

G *IRWMPs* – Reduce reliance on the Delta? To some, the language in §79741(c) significantly misstates existing “reduced reliance on the Delta” language. Considering the sensitivity of many different parties regarding that language, the bond should either quote § 8501 directly and in full, or simply require compliance with §85021.

AMENDMENT G amends the bill as follows:

- Deletes the paraphrase of §85021 and instead simply cross-reference that section.

H *Matching Rates.* This bill requires a 50 percent cost share for most grant programs, which can be reduced or waived for disadvantaged communities. Some complain the 50% share is difficult for smaller, though not disadvantaged, communities to afford.

AMENDMENT H amends the bill as follows:

- Reduces matching rates to 25 percent that can be reduced or waived for disadvantaged communities.

## *AMENDMENTS NECESSARY TO ADDRESS OTHER ISSUES*

- I *Funding Formulae*. This measure would distribute IRWMP funds across the regions as follows: Each region received a \$35 M allocation, and the balance was distributed based on 2000 population. An amendment is needed to distribute funding based on 2010 population.
- J *Studies?* The committee background for our September 25, 2013 informational hearing observed that none of the proposals included funding for studying the feasibility of additional surface storage projects. An amendment is needed to provide \$25 M to DWR for studying the feasibility of additional surface storage projects.
- K *Regional Watershed – Fronting grant funds?* Typically, grantees are funded on a reimbursement basis. This insures that state funds are only paid for authorized and otherwise appropriate uses. This bill proposes to allow watershed funds to be disbursed before the grantee has incurred any expenses. Doing so removes a major tool in insuring state funds are not misused. An amendment is need to delete the authorization for watershed funds to be disbursed before the grantee has incurred any expenses.
- L *Watersheds of statewide interest – Refuge water supply?* This bond would provide \$500 M to fulfill the obligations of the state in complying with specific settlements and other obligations. Included in this list is “Section 3406(d) of Title 34 of Public Law 102-575.” This is a provision in the federal law, the Central Valley Project Improvement Act, which calls for California to fund 25 percent of the costs to provide water for federal wildlife refuges. The state has never acknowledged this as a valid obligation of the state and has never provided funds for this purpose. An amendment is needed to delete authorization of funding pursuant to Section 3406(d) of Title 34 of Public Law 102-575.
- M *Stormwater – Policy focus?* This bond would authorize funding for a broad range of stormwater projects. It might make more sense for a *water bond* to provide a competitive pot of funds for projects that provide water supply and potentially other benefits. An amendment is needed to clarify that the funds are for projects that provide water supply and potentially other benefits.
- N *IRWMPs* – The “increment of project costs related to the project’s public benefits?” This bond proposes to fund increment of project costs, up to 50 percent of the total cost of a project, related to the project’s public benefits. The public benefits are then defined as
- Any regional self-reliance improvement to meet water supply needs.
  - Any net improvement to public trust resources, including the conservation of species listed as endangered or threatened .

A couple of points: First, state funding for IRWMPs has never been limited to “public benefits.” Instead, when IRWMPs were first funded though Proposition 50, the notion was to create incentives for developing a multi-agency, multi-purpose approach to water resources investments. This was a real departure from the then traditional bond funding approach of naming and funding specific single purpose projects. The fact that some private benefits might accrue through the IRWMP approach has not been an issue, at least not to date. Second, water supply is not considered a “public benefit” in storage chapter, so why would it be considered a public benefit for this chapter? Third, if water supply is a public benefit, what about flood management or other IRWMP eligible projects? An amendment is

needed to delete the limitation of IRWMP funding to the increment of project costs related to the project's public benefits.

- O *Storage* – Emergency response? The bill provides that bond funds can only be used to fund the public benefits of storage, and further provides that “emergency response” is one of the fundable public benefits. How would the emergency response program work? Would we hold water in storage for emergencies? If so, that water would likely provide little to no benefit in most years, years where that water might be more beneficially used elsewhere. Moreover, while it might be useful to have funds to acquire water for emergency actions, those funds should likely be available for acquiring water from any available reservoir. However, that does not appear to be a sufficient reason for additional public funds to construct a new reservoir. An amendment is needed to delete emergency response as a fundable public benefit for storage.
- P *Storage* – regional water storage benefits? The bill provides that bond funds can only be used to fund the public benefits of storage, and further provides that regional storage benefiting either more than one drinking water supplier or more than 3 million people is one of the fundable public benefits. It is not clear what the distinction is between regional and either statewide or local benefits. It is also not clear why this type of water supply is a public benefit yet water supplies for other uses (such as agricultural uses) are not. Typically, no type of water supply is considered a public benefit, as the costs of providing that water can easily be recovered through the water users' utility bills. An amendment is needed to delete regional storage for drinking water as a fundable public benefit.
- Q *Storage* – Measurable improvements to the Delta? Previous versions of this bill, along with the current 2014 bond and SB 848 include a provision that any storage facility constructed in the Delta watershed must result in measurable improvements to the Delta ecosystem. Recent amendments to this bill deleted that language and instead put in place a reference to language in the Delta Reform Act regarding “reducing reliance on the Delta.” While it is true that more projects across the state are fundable under this chapter than the existing 2014 water bond, it is not clear why projects within the Delta watershed should not continue to be required to improve the Delta ecosystem. An amendment is needed to delete the new language referring to reducing reliance on the Delta and add language requiring projects within the Delta watershed to provide measurable improvements to the Delta ecosystem.
- R *Other issues* – There are a number of other amendments needed to address minor, technical, or other policy consistency issues. These include:
- Linking funding eligibility to that authorized in statute.
  - Linking program policies to those established in statute.
  - Ensuring administrating agencies have necessary authorities to oversee their programs.
  - Clarifying how superfund sites should be treated under the recycled water program.
  - Resolving the definition of public benefits associated with project funded to assist in the Delta's sustainability.
  - Establishing parameters around the new Delta levee and emergency response programs.
  - Revising the storage language to ensure Temperance Flat and Los Vaqueros could be funded by this bond should they prove feasible.
  - Resolving language regarding funding of environmental compliance obligations.
  - Clarifying the use of CCC members whenever feasible.
  - Other minor, technical and clarifying amendments.

### Related Measures:

- SB 848 (Wolk) – would repeal the water bond currently on the November 2014 and would replace it with the Safe Drinking Water, Water Quality, and Water Supply Act of 2014, a \$6.825 B general obligation bond to finance a variety of water resources related programs and projects.
- SB 927 (Cannella and Vidak) – would amend the water bond currently on the November 2014, reducing the authorized amount from \$11.14 B to \$9.217 B, and rename the measure the Safe, Clean, and Reliable Drinking Water Supply Act of 2014.
- SB 1370 (Galgiani) would repeal the water bond currently on the November 2014 the Reliable Water Supply Bond Act of 2014, a \$5.1 B general obligation bond to finance surface water storage projects.
- AB 1445 (Logue) – would repeal the water bond currently on the November 2014 and would replace it with the California Water Infrastructure Act of 2014, a \$5.8 B general obligation bond to finance public benefits associated with water storage projects.
- AB 2043 (Bigelow and Conway) – would repeal the water bond currently on the November 2014 and would replace it with the Safe, Clean, and Reliable Drinking Water Supply Act of 2014, a \$7.935 B general obligation bond to finance a variety of water resources related programs and projects.
- AB 2686 (Perea) – would repeal the water bond currently on the November 2014 and would replace it with the Clean, Safe, and Reliable Water Supply Act of 2014, a \$9.25 B general obligation bond to finance a variety of water resources related programs and projects.

Referred to Environmental Quality Committee. This analysis does not address issues within the purview of the Senate Environmental Quality Committee. Issues likely to be raised by that committee include:

- Definitions of “disadvantaged community” and “severely disadvantaged community.”
- Funds provided for safe drinking water needs including the use of bond proceeds to fund operations and maintenance costs of interim water treatment equipment and systems.
- The structure of the grant and loan program for public water system infrastructure improvements.
- The provision of funds for private well owners.
- Requirements for water quality monitoring.
- Whether to provide funds to State Parks to comply with drinking water and wastewater requirements.
- Other water quality related issues raised in the committee background for the September 25, 2013 joint hearing.

Referred to Rules for future referral to Governance and Finance Committee. This analysis does not address issues within the purview of the Senate Governance and Finance Committee. Issues likely to be raised by that committee include:

- The potential effect of this measure on the state’s bonded indebtedness.
- The requirements for establishing low interest loan programs authorized by this bond.
- Other issues associated with the authorization of general obligation debt.

### **SUPPORT**

Amigos de los Rios

Benicia Tree Foundation

California Association of Sanitation Agencies

California Municipal Utilities Association (If amended)

California ReLeaf  
California State Council of Laborers  
California Urban Forests Council  
California Water Association  
Canopy  
City of Beaumont  
City Trees  
Clean Water Action (If amended)  
Community Services Employment Training  
Community Water Center (With amendments)  
Eastern Municipal Water District (If amended)  
Friends of the Urban Forest  
Goleta Valley Beautiful  
Hollywood/Los Angeles Beautification Team  
Huntington Beach Tree Society  
Incredible Edible Community Garden  
International Society of Arboriculture, Western Chapter  
Keep Eureka Beautiful  
Koreatown Youth and Community Center  
Los Angeles Conservation Corps  
Metropolitan Water District of Southern California (In concept)  
North East Trees  
Oakland Landscape Committee  
Our City Forest  
Professional Engineers in California Government  
Roseville Urban Forest Foundation  
Sacramento Tree Foundation  
Salton Sea Authority  
Save Our Forest  
Sonoma County Water Agency (If amended)  
The Nature Conservancy  
Three Valleys Municipal Water District (If amended)  
Tree Davis  
Tree Foundation of Kern  
Tree Musketeers  
Tree Partners Foundation  
TreePeople  
Trust for Public Land (If amended)  
Upper District (If amended)  
Urban Corps of San Diego County  
Urban ReLeaf  
Urban Tree Foundation  
WateReuse  
Woodland Tree Foundation

**OPPOSITION**

Association of California Water Agencies (Unless amended)  
Northern California Water Association (Unless amended)