

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

BILL NO: SB 1250

AUTHOR: Hueso

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REFERRALS: Environmental Quality &
Governance and Finance

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

HEARING DATE: May 13, 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 Committees 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 \$10.15 B general obligation bond titled “The Safe, Clean, and Reliable Drinking Water Supply Act of 2014.”

The proposed bond measure is organized as follows:

	Chapter 1. Short Title
	Chapter 2 Findings and Declarations
	Chapter 3. Definitions
	Chapter 4. General Provisions
\$900 M	Chapter 5. Clean, Safe, and Reliable Drinking Water
1,350	Chapter 6. Water Supply Reliability and Drought Preparedness
2,250	Chapter 7. Delta Sustainability
3,000	Chapter 8. Statewide Water System Operational Improvement for Drought Preparedness
1,300	Chapter 9. Protecting Rivers, Lakes, Streams, Coastal Waters, and Watersheds
500	Chapter 10. Groundwater Sustainability
500	Chapter 11. Water Recycling Program
250	Chapter 12. Water Conservation
100	Chapter 13. Local and Regional Storage Projects
	Chapter 14. Fiscal Provisions
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\$10,150 M	

Chapter 5. Clean, Safe, and Reliable Drinking Water. This chapter would authorize \$900 M, upon appropriation by the Legislature to the State Water Resources Control Board (state board), for the following purposes:

- Reduce contaminants in drinking water supplies regardless of the source of the water or the contamination.
- Address the critical and immediate needs of disadvantaged, rural, or small communities that suffer from contaminated drinking water supplies.
- Leverage other private, federal, state, and local drinking water quality and wastewater treatment funds.
- Reduce contaminants in discharges to, and improve the quality of, surface water streams.
- Implement stormwater quality projects, including multibenefit stormwater quality projects.
- Prevent further contamination of drinking water supplies.
- Provide disadvantaged communities with public drinking water infrastructure that provides clean and safe drinking water supplies that the community can sustain over the long term.
- Ensure access to clean, safe, and affordable drinking water for California’s communities.

This chapter would further require:

- Projects to be selected by a competitive grant or loan process with added consideration for those projects that leverage private, federal, or local funding. This would not apply to projects that address a public health priority for which no other source of funding can be identified.
- The state board to assess the capacity of a community to pay for the operation and maintenance of the facility to be funded.

Projects receiving funding authorized by this chapter could be implemented by any public water system or other public water agency.

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 for 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 state board 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.

Chapter 6. Water Supply Reliability and Drought Preparedness. This chapter would authorize \$1,350 M, upon appropriation by the Legislature, for integrated regional water management projects as follows:

- \$1,000 M to DWR and in collaboration with the state board, for grants to eligible projects that implement an adopted integrated regional water management plan.
- The funds would be distributed among 12 regions for competitive grants within each region. The regional distribution was a fixed amount per region with the balance distributed by population.
 - Projects would be required to have not less than a 50% local cost share. DWR could waive or reduce the cost-sharing requirement for projects that directly benefit a disadvantaged community or an economically distressed area.
 - Not less than 10 % of the funds would be allocated to disadvantaged communities.

- 350 M to DWR for grants and expenditures for the planning, design, and construction of local and regional conveyance projects that support regional and interregional connectivity and water management.
- Projects would be required to be consistent with an adopted integrated regional water management plan and provide one or more of the following benefits:
 - Improved regional or interregional water supply and water supply reliability.
 - Mitigation of conditions of groundwater overdraft, saline water intrusion, water quality degradation, or subsidence.
 - Adaptation to the impacts of hydrologic changes.
 - Improved water security from drought, natural disasters, or other events that could interrupt imported water supplies.
 - Provision of safe drinking water for disadvantaged communities and economically distressed areas.
 - Projects would be required to have not less than a 50% local cost share. DWR could waive or reduce the cost-sharing requirement for projects that directly benefit a disadvantaged community or an economically distressed area.

Chapter 7. Delta Sustainability. This chapter would authorize \$2,250 M, upon appropriation by the legislature, for grants and direct expenditures. Funds to improve and maintain Delta levees or other flood management facilities would be available for appropriation to DWR. All other funds would be available for appropriation to the Delta Conservancy. Funds would be made available as follows:

- \$750 M for projects that support Delta sustainability options. Of that amount, \$250 M is to provide assistance to local governments and the local agricultural economy due to loss of productive agricultural lands for habitat and ecosystem restoration within the Delta.

Projects that receive funding from this category would be eligible for funding through other provisions of this bond to the extent that the combined state funding from this division did not exceed 50 percent of the total project costs.

- 1,500 M for projects to protect and enhance the sustainability of the Delta ecosystem, including projects that protect, restore and enhance the Delta ecosystem and other projects to protect and restore native fish and wildlife dependent on the Delta ecosystem.

Chapter 8. Statewide Water System Operational Improvement for Drought Preparedness. This chapter would continuously appropriate \$3,000 M to the California Water Commission (CWC) for public benefits associated with water storage projects.

Eligible projects consist of only the following:

- Surface storage projects identified in the CalFed Bay-Delta Program Record of Decision, dated August 28, 2000, (CalFed ROD) not including projects prohibited under the California Wild and Scenic Rivers Act. That is, Sites Reservoir, Temperance Flat Reservoir, the Delta Wetlands Project, and Los Vaqueros Reservoirs are eligible projects.
- 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.

Projects must provide measurable improvements to the Delta ecosystem or to the tributaries to the Delta.

Projects are to be selected by the CWC through a competitive public process that ranks potential projects based on the expected return for public investment as measured by the magnitude of the public benefits provided.

Public benefits to be considered are limited to the following:

- Ecosystem improvements.
- Water quality improvements in the Delta, or in other river systems, that provide significant public trust resources, or that clean up and restore groundwater resources.
- Flood control benefits.
- 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.
- Recreational purposes, including, but not limited to, those recreational pursuits generally associated with the outdoors.

The CWC, in consultation with the Department of Fish and Wildlife, the State Water Resources Control Board, and DWR, would be required to develop and adopt, by regulation, methods for quantification and management of public benefits by December 15, 2016.

No funds may be allocated for a project before all of the following have occurred: December 15, 2016, and until the CWC determines that all of the following have occurred:

- The CWC has adopted the regulations regarding public benefits and has quantified and made public the cost of the public benefits associated with the project.
- The project applicant has entered into a contract with each party that will derive benefits, other than public 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 shall be consistent with that party's share of total project costs.
- The project applicant has entered into a contract with each public that administers the public benefits to ensure that the public contribution achieves the public benefits identified for the project.
- The CWC has held a public hearing to provide an opportunity for the public to review and comment on the information required to be prepared pursuant to this subdivision.
- Feasibility studies have been completed.

- The CWC has found and determined that the project is feasible, is consistent with all applicable laws and regulations, and will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta.
- 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.

The public benefit cost share could not exceed 50 percent of the total costs of a project. This limit would not apply to conjunctive use and reservoir reoperation projects.

At least 50% of total public benefits of the project would be required to be ecosystem improvements.

A project would not be eligible for funding unless, by January 1, 2022, all of the following are met:

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

The January 1, 2022 date would be tolled in the event meeting that deadline was delayed by litigation or failure to promulgate regulations.

Funds for CALFED projects may be provided to local joint powers authorities (JPAs) formed by irrigation districts and other local water districts and local governments within the applicable hydrologic region to design, acquire, and construct those projects.

- The JPA may include governmental partners not located within the hydrologic regions. The JPA could not include in its membership any for-profit corporation, or any mutual water company whose shareholders and members include a for-profit corporation or any other private entity. DWR would be required to be an ex officio member of each such JPA, but DWR could not control the governance, management, or operation of the surface water storage projects.
- The JPA would own, govern, manage, and operate a surface water storage project, subject to the requirement that the ownership, governance, management, and operation of the surface water storage project shall advance the purposes set forth in this chapter.

The CWC would be required to make \$25 M available to DWR to study the feasibility of additional surface storage projects, excluding any storage project identified in the CalFed ROD.

Any amendment of the provisions of this chapter by the Legislature would require a two-thirds vote in each house of the Legislature and voter approval.

Chapter 9. Protecting Rivers, Lakes, Streams, Coastal Waters, and Watersheds. This chapter would provide, upon appropriation by the Legislature, \$1,300 M in funding for expenditures and grants for multibenefit ecosystem and watershed protection and restoration projects that protect and improve California watersheds, wetlands, forests, and floodplains.

Funds would be made available as follows:

\$550 M to specific conservancies, the Wildlife Conservation Board, and the California Coastal Protection Council according to a specific schedule.

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.

Expenditures funded by this subdivision would be required to fund capital assets.

250 M to the state board for projects that develop, implement, or improve a stormwater capture and use plan and that capture and put to beneficial use stormwater or dry weather runoff. Eligible projects would include:

- Projects that capture, convey, treat, or put to beneficial use stormwater or dry weather runoff.
- The development of stormwater capture and reuse plans.
- Decision support tools, data acquisition, and data analysis to identify and evaluate the benefits and costs of potential stormwater capture and reuse projects.
- Projects that, in addition to capturing and reusing stormwater or dry weather runoff, improve water quality, provide public benefits, such as augmentation of water supply, flood control, open space and recreation, and projects designed to mimic or restore natural watershed functions.

Projects would require a 50 percent local cost share, but may suspend or reduce the matching requirements for projects that capture or reuse stormwater or dry weather runoff in disadvantaged communities.

The state board would be required to adopt a policy establishing criteria for projects funded by this bond program to ensure that a project funded pursuant to this section complies with water quality laws and does not put at risk any groundwater or surface water supplies.

Chapter 10. Groundwater Sustainability. This chapter would authorize \$500 M, upon appropriation by the Legislature to the state board, for expenditures, grants, and loans for projects to prevent or cleanup the contamination of groundwater that serves or has served as a source of drinking water. Funds appropriated pursuant to this section would be available for projects necessary to protect public health by preventing or reducing the contamination of groundwater that serves or has served as a major source of drinking water for a community.

Projects would be prioritized based upon the following criteria:

- The threat posed by groundwater contamination to the affected community's overall drinking water supplies, including an urgent need for treatment of alternative supplies or increased water imports if groundwater is not available due to contamination.
- The potential for groundwater contamination to spread and impair drinking water supply and water storage for nearby population areas.
- The potential of the project, if fully implemented, to enhance local water supply reliability.
- The potential of the project to maximize opportunities to recharge vulnerable, high-use groundwater basins and optimize groundwater supplies.
- The project addresses contamination at a site for which the courts or the appropriate regulatory authority has not yet identified responsible parties, or where the identified responsible parties are unwilling or unable to pay for the total cost of cleanup.

The Legislature, by statute, would be required to establish both of the following:

- A requirement that the grantee repay grant funds in the event of cost recovery from the parties responsible for the groundwater contamination.
- A requirement that the grantee make reasonable efforts to attempt to recover the costs of cleanup from the parties responsible for the contamination, except that a grantee shall not be required to seek cost recovery related to the costs of response actions apportioned to responsible parties who are insolvent or cannot be identified or located or when a requirement to seek cost recovery would impose a financial hardship on the grantee.

Other provisions include:

- Projects would be selected by a competitive grant or loan process with added consideration for those projects that leverage private, federal, or local funding.
- Projects would require 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.
- Any agency administering grants or loans would be required to assess the capacity of a community to pay for the operation and maintenance of the facility to be funded.
- At least 10 percent of the funds available pursuant to this chapter would be allocated for projects serving severely disadvantaged communities.
- Any agency administering funding from this chapter would be required to operate a multidisciplinary technical assistance program for small and disadvantaged communities and shall provide funding for technical assistance to disadvantaged communities.

Chapter 11. Water Recycling Program. This chapter would authorize \$500 M, upon appropriation by the Legislature to the state board, for grants for water recycling and advanced treatment technology projects, including all of the following:

- 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 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.
- Technical assistance and grant writing assistance for disadvantaged communities.

Projects would require 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.

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

- 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, including both northern and southern California and coastal and inland regions.

The program authorized by this chapter would be required to be implemented consistent with water recycling programs established under Proposition 13 (2000) or consistent with desalination programs established under Proposition 50 (2002).

Chapter 12. Water Conservation. This chapter would authorize \$250 M, upon appropriation by the Legislature to DWR, for direct expenditures and grants for water conservation and water use efficiency plans, projects, and programs, including any of the following:

- Urban water conservation plans, projects, and programs, including regional projects and programs, implemented to meet the 20x2020 conservation targets.
- Agricultural water management plans and efficiency projects and programs.

The department would be required to award grants in a competitive process that considers, as primary factors, the local and statewide conservation and water use efficiency benefits of the measures proposed for grants.

Chapter 13. Local and Regional Storage Projects. This chapter would provide \$100 M continuously appropriated to DWR for the public benefits associated with the following:

- Local and regional surface and groundwater storage projects that improve the operation of water systems in the state;
- Local and regional conjunctive use and reservoir reoperation projects; and
- Local and regional projects that improve dam stability in seismic events.

DWR would be required to fund projects through a competitive public process that ranks potential projects based upon the expected return for public investment as measured by the magnitude of the public benefits provided.

Funds could not be expended for the costs of environmental mitigation measures or compliance obligations except for those associated with providing the public benefits.

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.

- 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. Agencies could use existing guideline if those guidelines otherwise met the requirements the programs funded through this bond.
- Exempts all bond funded programs, except those funded by Chapter 8. Statewide Water System Operational Improvement for Drought Preparedness, 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.
- States that the bond is intended to promote the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem
- 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.
- 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.
- All references in this bond to other provisions of law would incorporate any future amendments to those provisions of law.
- Funds provided by this bond could be used to acquire water if both of the following conditions are met:
 - The acquisition involves a long-term water transfer, a purchase of water, or other agreement that results in enhanced stream flow such as reservoir reoperation.
 - The Department of Fish and Wildlife determines that the acquisition will provide fisheries or ecosystem benefits or improvements.

ARGUMENTS IN SUPPORT

According to a coalition of water agencies and farming and business interests, “In 2009, the Legislature recognized that bond funding was needed for water supply reliability, Delta ecosystem restoration and other water-related needs. The severe drought that California is experiencing has dramatically brought California’s water supply reliability problems to the public’s attention. With communities running out of drinking water, fish being transported in trucks, and water deliveries for farmers being cut dramatically - the time is now for California to pass a comprehensive water bond to prepare for future droughts and address critical water-related needs.”

“SB 1250 includes substantial funding for local and regional water projects throughout the state through the Integrated Regional Water Management Plan program. It includes funding for drinking water projects – with special focus on funding for disadvantaged communities that do not have safe drinking water.”

“The bill also includes a stand-alone chapter regarding groundwater quality – and more funding for this category than the other water bond bills that the Senate Natural Resources and Water Committee has heard to date. The bill will also address watershed protection which is critical to both water quality and water supply.”

“SB 1250 would help fund broader needs in California – such as Delta ecosystem restoration and storage – both surface storage and below surface storage. It would provide for continuous appropriation of the storage dollars so that the decisions on storage can be made by a commission in a fact-driven process with criteria and procedural safeguards.”

“For these reasons, our organizations support SB 1250 and respectfully request your “AYE” vote.”

ARGUMENTS IN OPPOSITION

Natural Resources Defense Council (NRDC) writes “Chapter 8 (storage) is one of the most problematic parts of the SB 1250. NRDC supports substantial bond funding for storage, provided that: (1) there is legislative oversight of these funds, like all other chapters of the bond; (2) the bond provides as much or more funding for conservation, water recycling, and other integrated water management programs which are a far more cost-effective and environmentally sustainable source of new water for California; (3) surface storage and groundwater storage projects compete for funding on a level playing field, to ensure that the best projects are funded; and (4) the bond explicitly prohibits funding for any storage project that would impact a river currently protected by the state or Federal Wild & Scenic River Acts, including explicitly prohibiting spending to expand Shasta Dam (as the State has already concluded this project would violate state law). Unfortunately, Chapter 8 does not meet these criteria.”

NRDC also wants to see more explicit accountability requirements for complying with the Water Conservation Act of 2009. “Chapter 4 of SB 1250 should be amended to explicitly provide that an urban or agricultural water supplier is ineligible to apply for funds unless they demonstrate compliance with the provisions of section 10608.56 of the Water Code and related requirements.”

A number of other environmental organizations further question the size of the bond, raising concerns about the impact of its repayment on the General Fund, and about the willingness of voters to approve a bond of this size. (This letter referred to the previous \$9.45 B version of this bill).

COMMENTS

1. How Much Is Too Much? The 2009 bond that is currently on the November ballot would authorize \$11.14 B in general obligation bond for water related investments. This bill, the largest bond bill heard in this committee this year, would authorize a \$10.15 B bond – about \$1 B less than that currently on the ballot.

Some of the motivation for replacing the 2009 bond is that it is perceived by some to be simply too large. This raises the question generally, what is the right size? And in the context of this proposal, is it too big?

Bond Bills Heard In Committee This Year:

SB 1370	Galgiani	\$ 6.26 B
SB 848	Wolk	\$ 6.83 B
AB 1331	Rendon	\$ 8.00 B
SB 927	Cannella & Vidak	\$ 9.22 B
SB 1250	Hueso	\$ 10.15 B

2. Where To Trim? If this bond were deemed too large, what funding categories would be reduced or eliminated? Recent amendments added \$700 M in new funding programs (\$350 M for conveyance projects, \$250 M for water conservation, and \$100 M for local and regional storage). If this bond was to be reduced, would the newly added programs be the first to be cut? Would cuts be across the board? Are some programs sacrosanct?

3. Geographic Equity. This bond would provide more than half its funding to support the Delta and create more storage. As discussed below, the storage funds would largely benefit the Central Valley, and the Delta funds would largely benefit those who export water from the Delta, namely Central Valley Project (CVP) and State Water Project (SWP) contractors. Conversely, these funds would not benefit those parts of the state outside of the Central Valley that are not served by the Central Valley Project or State Water Project; namely, the Central and North Coasts and most of the Bay Area.

To more precisely evaluate the relative geographic benefits of the bond, one must classify the funding programs by potential beneficiaries. Some funds, such as the water quality programs, are available competitively statewide, so potentially all parts of the state could benefit. Others, such as IRWMP, are specifically distributed by region. Still others are assigned to agencies with specific geographic jurisdictions, so the regional distribution must be inferred. Finally, service areas of the CVP and SWP, for example, do not encompass or exclude entire regions, so some judgment must be used as well.

Staff categorized the funding proposed by this bond by IRWMP region. Generally, the mountain, desert, and north-of-Ventura Coastal regions would be able to compete for or would directly benefit from about one-third of the programs funded by this proposal. Southern California regions would be able to compete for or would directly benefit from about 55 percent of the bond funds, and the Central Valley regions would be able to compete for or would directly benefit from over 85 percent of the funds.

4. Storage – Chapter 8. Most of the storage provisions in this bond are virtually identical to those the 2009 bond, so the comments on that bond in the committee background for our September 25, 2013 informational hearing apply here as well.

As with many of the previous bonds presented to this committee this year, the storage provisions of this bond are contentious. The issues fall into the following categories:

- Loss of the Legislative Branch’s power to allocate funds.
- Criteria that are biased against groundwater storage and that restrict geographic eligibility.
- Broadening the eligible uses of the funds.
- *Loss of the Legislative Branch’s power to allocate funds.* This bill provides 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.

- *Criteria that are biased against groundwater storage & that restrict geographic eligibility.* While the provisions in Chapter 8 do set up a competitive process, the deck appears to be stacked to approve only the three CalFed storage projects. Specifically, by including recreation and emergency supplies as public benefits, and further, by using the value of public benefits as the criteria for selecting projects, only the large surface storage projects could truly compete for funding. Indeed, it is difficult to imagine what the recreational benefits of a groundwater recharge basin might be. Additionally, projects funded under Chapter 8 are required to provide “measurable improvements to the Delta ecosystem or to the tributaries to the Delta.” This requirement effectively eliminates funding for projects outside the Central Valley. As the criteria for funding appear skewed such that only the 3 large storage projects can effectively compete for funding, one might argue that Chapter 8 constitutes a covert earmark.
- *Broadening the eligible uses of the funds.* In addition to building more traditional storage projects, there is a desire of many to explore recovering lost storage capacity, capacity lost by seismic vulnerability or sedimentation. Additionally, some water agencies are looking to build surface storage not for drinking water supplies, but for recycled water. However, recent amendments, instead of broadening the list of eligible projects, deleted the provision that would have made seismic retrofit projects eligible for funding from this program.

5. Local and Regional Storage. Recent amendments did add a new storage program, \$100 M continuously appropriated to DWR for the public benefits of local and regional storage projects. Especially when compared to the language in Chapter 8, the new language seems short of detail. However, it does raise a number of questions.

- *Why create an all-new program?* Chapter 8 provides much guidance as to how to measure public benefits, the method for selecting projects, etc. It is not clear why an all-new program is necessary.
- *Why a statewide program?* As it appears that the Central Valley is the principal beneficiary of Chapter 8, why would Central Valley projects be eligible for this new funding program as well?
- *Why only \$100 M?* It is not apparent why the storage needs of the Central Valley are \$3 B, yet the rest of the state needs only one-thirtieth that amount.
- *Why not simply broaden Chapter 8?* Those provisions could be amended so that all the state’s storage projects could compete on an even basis. That would ensure the state’s capacity to store more water was accomplished through the most cost effective projects.

6. Necessary Changes to Storage Provisions. *AMENDMENTS ARE NEEDED* to do the following:

- Make storage projects under Chapter 8 subject to appropriation by the Legislature.
- Delete emergency response as fundable public benefit and a criterion for project selection.
- Delete recreation as fundable public benefit and a criterion for project selection.
- Clarify that only projects within the *Delta watershed* need to provide measurable improvements to the Delta ecosystem.
- Add sediment removal and current seismic improvements to the list of projects eligible for storage funds, and clarify that storage for recycled water is also an eligible project.
- Delete the new Chapter 13 regarding local and regional storage.

7. Covert Earmark. This committee has been very consistent in not approving any bond measures that contain earmarks, whether overt or covert. (See previous analysis of SB 927 (Cannella and Vidak) for a discussion of the distinction between overt and covert earmarks.)

Recent amendments provide \$350 M in §79733 for planning, design, and construction of local and regional conveyance projects that support regional and interregional connectivity and water management. Staff is aware of only one set of projects that meets the requirements of that section, one or more proposed bidirectional canal(s) in the San Joaquin Valley to connect the Central Valley Project's Friant-Kern Canal to the State Water Project's California Aqueduct.

To be consistent with previous committee actions, *AN AMENDMENT IS NEEDED* to remove this provision. Alternatively, as one of the purposes of the cross valley canal is to facilitate operations of the proposed Temperance Flat Reservoir, an amendment could be made that would make this project eligible for funding under the Chapter 8 storage program.

8. 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.

Moreover, the compliance requirements only apply to regional IRWMP: Not other funding programs for which urban and agricultural suppliers and groundwater managers may otherwise be eligible. These include the groundwater sustainability, water recycling, water conservation programs.

While DWR's approach 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.

To address this issue, *AN AMENDMENT IS NEEDED* to require DWR to certify that urban and agricultural suppliers and groundwater managers are be compliant with the Urban Water Management Planning Act, Agricultural Plans, or Groundwater Management Plan requirements, as appropriate, and a condition of receiving any funds from this bond. Further, an exception should be made for grants intended to bring the agency into compliance with the applicable law.

9. 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. *AN AMENDMENT IS NEEDED* to reduce matching rates to 25 percent that could be reduced or waived for disadvantaged communities

10. Grants Versus Direct Expenditures. Previous bond proposals heard by this committee generally provided all of the funds through competitive grant programs. For a number of programs, this proposal would provide funds for grants and direct expenditures. This raised two sets of questions:

- Should DWR, for example, have access to bond funds to fund projects or programs outside of the competitive grant framework?
- If so, what guidance is necessary in the bond to ensure those direct expenditures are appropriate?

11. Other Issues. Recent amendments raise two technical issues:

- *Coequal Goals.* A new provision was added to the intent language in §79701 (f) regarding the coequal goals, as defined in §85054. The section both cites and paraphrases the language in §85054. Given the sensitivities regarding the definition of coequal goals, AN AMENDMENT IS NEEDED to either simply cite §85054 or to repeat the entire section verbatim.
- *Funds for Water Purchases.* A new provision was added stating that funds provided by this bond could be used to acquire water if both of the following conditions are met:
 - The acquisition involves a long-term water transfer, a purchase of water, or other agreement that results in enhanced stream flow such as reservoir reoperation.
 - The Department of Fish and Wildlife determines that the acquisition will provide fisheries or ecosystem benefits or improvements.

This language would allow the use of bond funds to make single year water purchases. Generally, use of bond funds should be limited to expenditures and purchases that provide benefits for roughly the same period that the debt is outstanding. Practically, this means one doesn't go into debt to fund an annual expense. AN AMENDMENT IS NEEDED to restrict the purchase of water to the acquisition of water rights or long term transfers.

12. 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. (Passed SNR&W 6-0)
- SB 927 (Cannella & 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. (Failed SNR&W 3-6)
- 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. (Held in SNR&W)
- 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 1331 (Rendon) – would repeal the water bond currently on the November 2014 and would replace it with the Clean and Safe Drinking Water Act of 2014, a \$8.0 B general obligation bond to finance a variety of water resources related programs and projects. (Passed with committee amendments 7-2)
- AB 2043 (Bigelow & 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 2554 (Rendon) – would repeal the water bond currently on the November 2014 and would replace it with the California Water Infrastructure Act of 2014, a \$8.5 B general obligation bond to finance public benefits associated with water storage 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.

13. 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,” “severely disadvantaged community,” and “economically distressed community.”
- The structure of the grant and loan program for public water system infrastructure improvements.
- The role of the State Water Resources Control Board in awarding IRWMP grants.
- The provision of funds for private well owners.
- 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.

14. Referred 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 loan programs authorized by this bond.
- Other issues associated with the authorization of general obligation debt.

SUGGESTED AMENDMENTS:

Amendments are suggested in comments 6, 7, 8, 9, and 11

SUPPORT

American Pistachio Growers
 Angiola Water District
 Association of California Egg Farmers
 Association of California Water Agencies
 Browns Valley Irrigation District
 California Bean Shippers Association
 California Chamber of Commerce
 California Citrus Mutual
 California Cotton Ginners Association
 California Cotton Growers Association
 California Farm Bureau Federation
 California Grain and Feed Association
 California Latino Water Coalition
 California Pear Growers Association
 California Rice Industry Association
 California Seed Association
 California State Council Of Laborers
 City of Corona

City of Sacramento
Cucamonga Valley Water District
Dublin San Ramon Services District
Elsinore Valley Municipal Water District
Friant Water Authority
Imperial Irrigation District
Indian Wells Valley Water District
Metropolitan Water District of Southern California (If Amended)
Mojave Water Agency
Monte Vista Water District
Regional Water Authority
Rialto Road Water District
San Geronio Pass Water Agency
San Joaquin River Exchange Contractors Authority
Scotts Valley Water District
South Tahoe Public Utility District
Southwest California Legislative Council
The Tehama Colusa Canal Authority
Three Valleys Municipal Water District
Valley Center Municipal Water District
West Valley Water District
Western Agricultural Processors Association
Western Municipal Water District
Westlands Water District
Wheeler Ridge Maricopa Water Storage District
Wilbur Reclamation District #825

OPPOSITION

Clean Water Action
Natural Resources Defense Council
Planning and Conservation League
Sierra Club California