SENATE NATURAL RESOURCES & WATER COMMITTEE

What's Changed Since the Legislature Passed the Safe, Clean, and Reliable Drinking Water Supply Act of 2010?

Committee Background

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.

When the bond measure was drafted, it both implicitly and explicitly presumed certain events were and were not going to happen. Over the course of the last 3+ years, some unexpected things occurred and some expected things did not occur.

Two weeks ago, this committee, in a joint hearing with the Senate Governance and Finance Committee, explored California's debt condition and the implications for the water bond. This hearing is intended to highlight some of the unanticipated developments that occurred since the drafting of the bond. The policy question before the committee today is "What changes, if any, should be made to the bond in light of recent developments?"

The witnesses will address five issues:

- Resilience and the 2007-2010 Drought
- Integrating Stormwater Management Into Regional Water Solutions
- Near-Term No/Low Risk For Regrets Delta Projects
- Recent Developments In Water Storage
- Communities That Rely On A Contaminated Groundwater Source For Drinking Water

To provide a context for members of the Senate Natural Resources and Water Committee this paper:

- Describes the general provisions of the Safe, Clean, and Reliable Drinking Water Supply Act of 2010, as amended;
- Summarizes the major provisions of each chapter; and
- Identifies major assumptions, recent developments, and other related topics.

It is important to note that this paper describes recent events only as related to programs and projects specifically proposed for funding under the Safe, Clean, and Reliable Drinking Water Supply Act of 2010, as amended. It does not discuss recent developments in other resource related programs that the legislature might deem worthy of general obligation bond financing, such as facilities of the state plan of flood control, state or local parks, or other resources programs or projects.

Bond Overview

SBX7 2 (Cogdill) was part of the water package passed in the 2009/10 7th Extraordinary Session. That bill proposed to place before the voters in November 2010, the Safe, Clean, and Reliable Drinking Water Supply Act of 2010, which would authorize $11.14 billion in general obligation bonds to fund various water resources programs and project. The proposed bond was organized as follows:

	Chapter 1.	Short Title
	Chapter 2.	Findings And Declarations
	Chapter 3.	Definitions
	Chapter 4.	General Provisions
$ 455 M	Chapter 5.	Drought Relief
1,400	Chapter 6.	Water Supply Reliability
2,250	Chapter 7.	Delta Sustainability
3,000	Chapter 8.	Statewide Water System Operational Improvement
1,785	Chapter 9.	Conservation And Watershed Protection
1,000	Chapter 10.	Groundwater Protection And Water Quality
1,250	Chapter 11.	Water Recycling Program
	Chapter 12.	Fiscal Provisions
$11,140 M		

SBX7 2 also specified the label, title, and summary to be included in the ballot pamphlet.

Provisions of the proposed water bond were amended twice in 2010 and once again in 2012:

- AB 153 (Hernandez) – amended the provisions governing allowable uses of funds for the San Gabriel Valley groundwater clean-up program.
- AB 1265 (Caballero) – delayed the placement of the water bond before voters to the November 6, 2012 general election, changed the title of the bond to the Safe, Clean, and Reliable Drinking Water Supply Act of 2012, and made conforming changes throughout the measure. The bill also amended the provisions governing joint powers authorities participation in surface storage projects.
- AB 1422 (Perea) – delayed the placement of the water bond before voters to the November 4, 2014 general election, deleted the provisions governing the ballot title and summary, but did not change the title of the bond act itself or any other operative parts of the bond.

All three bills also included provisions regarding how the Secretary of State was to incorporate the amendments made by those bills into the measure placed before the voters.

Chapter 1. Short Title

Summary of Provisions: Names the bond proposal the "Safe, Clean, and Reliable Drinking Water Supply Act of 2012."

Recent Developments: The bond is now on the November 2014 ballot.

Chapter 2. Findings and Declarations

Summary of Provisions: The findings generally extol the benefits of access to clean, safe and reliable water.

Recent Developments: In 2012, the legislature passed and the governor signed AB 685 (Eng). That bill placed in statute that "the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." (See Attachment ____).

Chapter 3. Definitions

Summary of Provisions: This chapter defines most of the technical terms used in the bond, including definitions for "disadvantaged community" and "economically distressed area."

Recent Developments: The definition of "disadvantaged community" used in the bond was first established in 2003 by AB 1747 (Budget Committee); a resources trailer bill that, among other things, establish guidelines and criteria for various elements and programs established by

Proposition 50 (Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002). That definition was based on the results of the 2000 census long form, and was intended to identify those parts of the state that were generally in the lower third of personal income.

Recent census data show some significant shifts in the state's economic demographics since 2000. For example, some counties, such as Yuba, Sierra, and Alpine, experienced vigorous growth in median incomes between 2000 and 2010, with growth rates of 56%, 59%, and 60% respectively. Conversely, Mendocino, Tehama, and Plumas counties posted significantly lower growth rates of 23%, 22%, and 17% respectively. (See Attachment ___).

Unfortunately, the long form for the 2010 census did not include questions regarding household income. Consequently, it is not clear if the definitions of need used by this bond still appropriately target the desired populations.

Chapter 4. General Provisions

Summary of Provisions: Establishes general conditions for use of the bond funds, including:

- Establishes limits on the amount of administrative costs that may be funded by the bond.
- Establishes the process for developing and adopting project solicitation and evaluation guidelines for bond fund programs and projects.
- States that it is the intent of the people that the investment of funds from the bond will result in public benefits.
- Requires the State Auditor to conduct an annual programmatic review and an audit of expenditures of bond funds.
- Prohibits the use of bond funds to pay for the costs of environmental mitigation measures or compliance obligations of any party except as a part of the mitigation costs of projects financed by the bond or for costs for groundwater cleanup.
- Prohibits the use of bond funds to pay the costs of the design, construction, operation, or maintenance of Delta conveyance facilities. Additionally, explicitly states that those costs are the responsibility of the water agencies that benefit from the design, construction, operation, or maintenance of those facilities.
- States that the bond measure does not affect any area of origin protections or any other water rights protections provided under the law.

Recent Developments: None

Chapter 5. Drought Relief

Summary of Provisions: Provides $455 M for programs and projects as follows:

$190 M for local and regional drought relief projects. Of that amount, $100 M is for projects, including surface storage projects, that provide emergency water supplies and water supply reliability in drought conditions in San Diego County.

$90 M for grants to disadvantaged communities and economically distressed areas for drought relief projects and programs.

$75 M for grants for small community wastewater treatment projects.

$80 M for deposit into the Safe Drinking Water State Revolving Fund. Of this amount, $8 M is for grants for projects within the City of Maywood.

$20 M for water quality and public health projects on the New River, near Calexico.

Recent Developments:

- Data suggest that despite concerns to the contrary, California weathered the recent drought relatively well. To be sure, there were areas where the local drought impacts were more severe than others. And some of the coping strategies, such as significantly increasing groundwater pumping, may not be sustainable.

  Ellen Hanak, of the Public Policy Institute of California, will testify at the hearing and provide additional insights on California's experience in the recent drought and implications for future water resources investments.

- At the request of Assembly Member Alejo, the Legislative Analyst's Office (LAO) has looked into the administration and performance of the Safe Drinking Water State Revolving Fund (SDWSRF), as administered by the Drinking Water Program within the Department of Public Health (DPH). They did so by comparing the SDWSRF to a similar financing program operated by a different agency—the Clean Water State Revolving Fund (CWSRF) as administered by the State Water Resources Control Board (SWRCB).

  The LAO found that while the performance of the SDWSRF has improved in recent years, it still generally performs less well than the CWSRF and significantly below the national average of the performance of other states' SDWSRFs. (See Attachment ___).

Chapter 6. Water Supply Reliability

Summary of Provisions: Provides $1,400 M for programs and projects as follows:

$1,050 M for projects that implement an adopted integrated regional water management plan. Of that amount, $1,000 M is 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. Of the remaining $50 M, $10 M is for a grant to the Sierra Nevada Research Institute of the University of California to identify and analyze water supply impacts of climate change on the Sierra Nevada

snow pack and runoff. The remaining $40 M is to address multiregional needs or state priorities.

$350 M for the planning, design, and construction of local and regional conveyance projects that support regional and interregional connectivity and water management.

Recent Developments:

- The same year the legislature passed SBX7 2, the legislature also passed SB 790 (Pavley). That bill, among other things, authorized local agencies to develop stormwater resources plans, which were to provide for multiple benefit projects that provide water supply, water quality, and environmental and other community benefits. Stormwater resources plans have generally been developed for one of two purposes, addressing pollution associated with storm events, or managing local flooding.

  While integrated regional water management plan and stormwater resources plans use similar multi-agency strategies to address water resources issues, the two programs tend to be developed and implemented independently.

  Rich Atwater, of the Southern California Water Committee, will testify at the hearing and share examples of how greater integration of regional water management and stormwater management approaches can improve water supply reliability, reduce non-point water pollution, and reduce the potential for flooding.

- As noted above, recent census data show some significant shifts in the state's economic demographics since 2000. In light of changing demographics, it is not immediately clear if the distribution of funds by region still appropriately reflects current populations. (See Attachment ___).

Chapter 7. Delta Sustainability

Summary of Provisions: Provides $2,250 M for programs and projects as follows:

$750 M for projects that support Delta sustainability options. Of that amount, $50 M is for improvements to wastewater treatment facilities upstream of the Delta to improve Delta water quality, and $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

$1,500 M for projects to protect and enhance the sustainability of the Delta ecosystem, including projects for the development and implementation of the Bay Delta Conservation Plan and other projects to protect and restore native fish and wildlife dependent on the Delta ecosystem.

Recent Developments:

- The bond was contingent upon passage of a number of bills, including SBX7 1 (Simitian), also known as the Sacramento-San Joaquin Delta Reform Act. That bill, among other things, created a Delta Stewardship Council, which was charged with developing and implementing a Delta Plan. The plan is to further the co-equal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The co-equal goals are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. The Delta Plan was to be adopted by January 2012.

  The Delta Act included provisions that would allow a Bay-Delta Conservation Plan (BDCP) to be included in the Delta Plan, should BDCP meet specific criteria. The BDCP is a multispecies conservation plan, whose major feature is a method to convey water through or around the Delta. The Delta Act did not provide a timeline for completion of the BDCP, but discussions at the time of the creation of the Delta Act suggested that the BDCP would be completed generally the same time as the Delta Plan.

  The development of both the Delta Plan and the BDCP has been at times quite contentious, and neither has been completed as of this hearing.

- Various parties have and continue to heatedly debate many if not most aspects of the Delta Plan and the BDCP. Nonetheless, an extraordinarily diverse group of interested parties "recognized there are good and worthy near-term projects that seem to get lost in the tensions surrounding these processes."

  Jonas Minton, of the Planning & Conservation League, and **Jason Peltier,** of Westlands Water District, will present the findings of what became known as the Coalition To Support Delta Projects.

Chapter 8. Statewide Water System Operational Improvement

Summary of Provisions: Provides $3,000 M for public benefits associated with water storage projects that improve the operation of the state water system, are cost effective, and provide a net improvement in ecosystem and water quality conditions, as follows:

Eligible projects consist of only the following:

- Surface storage projects identified in the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, 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 are to be selected by the California Water Commission 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 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.

<u>Recent Developments:</u>
- Feasibility studies have yet to be completed for either Sites Reservoir or Temperance Flat Reservoir.

- Water agencies are building more surface storage, without state funding:

  Contra Costa Water District just completed its Los Vaqueros Reservoir project. The dam has increased in height by 34 feet, and is now 226-feet high. The reservoir's capacity grew from 100,000 acre-feet to 160,000 acre-feet, an increase of 60 percent.

  San Diego County Water Agency is in the midst of raising San Vicente Dam. The dam currently stands at 220 feet and can store up to 90,000 acre-feet of water. The dam raise project will increase the height of the dam by 117 feet – the tallest dam raise in the United States and the tallest of its type in the world. The raised dam will store an additional 152,000 acre-feet of water, more than doubling the capacity of the reservoir.

- Recent studies suggest that expanding reservoirs capacity is not necessarily useful for climate change.

Jay Lund, of UC Davis, will provide an update on current water storage issues.

Chapter 9. Conservation and Watershed Protection

Summary of Provisions: Provides $1,785 M for expenditures and grants for ecosystem and watershed protection and restoration projects. The funds are distributed to a variety of conservancies and watershed related programs, including:

- Baldwin Hills Conservancy.
- Lake Tahoe Conservancy.
- San Diego River Conservancy.
- San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy.
- San Joaquin River Conservancy.
- Santa Monica Mountains Conservancy.
- Sierra Nevada Conservancy.
- State Coastal Conservancy.
- Wildlife Conservation Board.
- California River Parkways Act of 2004.
- California Waterfowl Habitat Program.
- Department of Conservation for the California Farmland Conservancy Program.
- Department of Parks and Recreation for grants for watershed education facilities.
- Department of Forestry and Fire Protection for fuel treatment and forest restoration projects.
- Salton Sea restoration.
- Dam removal and related measures in the Klamath River watershed.
- Siskiyou County for the purpose of economic development.
- California State University for the California State University Water Resources and Policy Initiatives.

Recent Developments: As noted in the Legislative Analysts' Office's *The 2013-14 Budget: Resources and Environmental Protection*, most of the existing bond funds that support the conservancies have already been appropriated and will be spent soon. (See Attachment ___).

Chapter 10. Groundwater Protection and Water Quality

Summary of Provisions: Provides $1,000 M for projects to prevent or reduce the contamination of groundwater that serves as a source of drinking water. Of that amount, $100 M is for costs associated with projects, programs, or activities that address contamination of a site listed on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, also known as superfund sites. An additional $100 M is set aside to finance emergency and urgent actions on behalf of disadvantaged communities and economically distressed areas.

Recent Developments: There has been much research recently on groundwater contamination and the effects on drinking water quality. Much of the work is summarized in two recent reports issued by the State Water Resources Control Board, *Communities That Rely On A Contaminated Groundwater Source For Drinking Water* (January 2013) and *Recommendations Addressing Nitrate In Groundwater* (February 20, 2013).

Tom Howard, of the State Water Resources Control Board, will summarize the findings and recommendations of Board's recent reports and their implications for future water resources investments.

Chapter 11. Water Recycling Program

Summary of Provisions: Provides $1,250 M for recycling and conservation projects as follows:

$1,000 M	for water recycling and advanced treatment technology projects. Of that amount $50 M is for projects that are designed to help restore lost water supply reliability in areas with widespread groundwater contamination in locations that contain superfund sites.
$250 M	for direct expenditures, grants, and loans for water conservation and water use efficiency plans, projects, and programs.

Recent Developments: There has been much research recently on identifying the technological barriers to direct potable reuse of recycled water and the actions necessary to remove those barriers. Two reports in particular are worth noting; George Tchobanoglous et al, *Direct Potable Reuse: A Path Forward* (2011), and National Research Council, *Water Reuse: Potential for Expanding the Nation's Water Supply Through Reuse of Municipal Wastewater* (2012). (See Attachment ___).

Chapter 12. Fiscal Provisions

Summary of Provisions: Includes the technical provisions authorizing the issuance of $11.14 B in general obligation bonds to provide the financing of the bond. Also includes provisions providing that no more than $5,570 M in bonds shall be sold by the Treasurer before July 1, 2015

Recent Developments: None