

BACKGROUND: Principles for Developing a Water Bond

July 2, 2013

The November 2014 ballot includes a measure asking the voters to authorize general obligation bond funding totaling \$11.14 billion for water infrastructure (2014 Water Bond). The Legislature originally approved this bond measure in 2009, for the November 2010 ballot. The proposed bond measure included, and still includes, funding for drought relief, integrated regional water management, the Sacramento-San Joaquin Delta (Delta), watershed protection, groundwater cleanup and water recycling.

In 2010, after certain initiatives qualified for the same ballot and polling showed flagging support for the water bond, the Legislature amended and postponed the bond measure to November 2012. Last year, polling showed that voters still would not support an \$11.14 billion water bond. Assembly Speaker John Pérez and Senate President Pro Tempore Darrell Steinberg convened water bond stakeholders to encourage them to discuss reducing the size of the proposed water bond. When stakeholders could not agree to how to reduce the bond and polling showed continued lagging voter support, the Legislature delayed the bond measure to 2014. The appropriate structure of a water bond on the 2014 ballot remains an issue for the Legislature.

I. 2009 Delta/Water Legislation – 7th Extraordinary Session

The Legislature originally approved the current water bond measure in the context of a package of legislation related to the Delta and water policy, the 2009 Delta/Water Legislation. The Legislature had worked all year on the Delta and water issues, starting with the Administration's submission of a Strategic Plan for the Delta on January 3. In a unique process, the Legislature convened bi-partisan, bi-cameral briefings on a plan for the Delta and on Delta governance. Following those briefings, certain legislators and their staff developed bills related to the Delta and certain water issues. The Legislature held hearings on those bills during August 2009. During this same period, the Legislature considered competing measures on water conservation, arising out of Governor Schwarzenegger's proposal to reduce urban water use by 20% by 2020. Some discussions regarding a water bond also proceeded, based on a Schwarzenegger proposal that had been considered every year since 2006. On the last night of the regular session, Senator Steinberg compiled the water bills (except the water bond) into one bill, but that bill did not pass.

Governor Threatens Veto of All Bills If No Bond. In that final week of session and the week before the deadline for the Governor to sign or veto bills, Schwarzenegger threatened to veto all bills unless the Legislature passed a package of water bills that included a water bond. He convened “the Big 5” to discuss a water package. Just before the deadline, the leadership agreed, in concept, on a package. Legislative leaders agreed to take the proposal to their caucuses. Schwarzenegger decided on the other bills on their merits and called the 7th Extraordinary Session to address water. In the weeks that followed, the Legislature continued working on the package of water bills, including a water bond measure authored by Senator Dave Cogdill.

Special Session Bond Bill. On October 27, Senator Cogdill introduced Senate Bill 2 of the 7th Extraordinary Session (SB 2 X7), a \$9.4 billion bond measure. In the days that followed, Senator Cogdill and Assemblymember Anna Caballero worked with other legislators on negotiating a water bond. The Assembly convened on Sunday afternoon, November 1, to consider the 2009 Delta/Water Legislation. On November 2, Senator Cogdill amended his bond bill, to increase the amount to \$9.99 billion, and the Senate passed the bond to the Assembly. Late on November 3, the Assembly passed the Delta Reform Act (SB 1 X7). The Assembly then amended the bond bill two more times in the early morning of November 4, leading to a total of authorized bond funding of \$11.14 billion. The Assembly passed that bond bill before dawn on November 4.

Water Policy Bills Independent of Water Bond Bill. The 7th Extraordinary Session resulted in passage of a package of bills that comprehensively addressed the challenges California faced in shaping its water future. The package, which the Governor signed in the following weeks, included SB 1 X7 (Delta Reform Act); SB 2 X7 (water bond); SB 6 X7 (Groundwater Elevation Monitoring); and SB 7 X7 (Water Conservation/20x2020), and SB 8 X7 (Water Rights Reporting & Enforcement). Each bill explicitly subjected its enactment to enactment of the other bills. Those other bills, however, were not conditioned on the bond bill’s passage and enactment by the voters. The package and the bond bill passed independently of each other.

A. SB 1 X7: Delta Reform Act

SB 1 X7 (Simitian) included several segments – reform of the Delta Protection Commission, creation of the Delta Conservancy, and the Delta Reform Act of 2009 (Reform Act). The Reform Act created the Delta Stewardship Council and required the Council’s development of a Delta Plan to set the path forward for all state and local agencies in managing the Delta’s valuable resources. The bill also imposed conditions on state agencies adopting a “Bay-Delta Conservation Plan” (BDCP) involving new conveyance of water from the Sacramento River to the state and federal water projects export facilities in the South Delta. The Reform Act also included requirements for various actions by the State, to achieve the “Coequal Goals” of water supply reliability and Delta ecosystem restoration. Section 85054 defines the Coequal Goals as:

the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall 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 2014 Water Bond includes \$2.25 billion for the Delta, including \$750 million for Delta counties and cities and \$1.5 billion for the Delta ecosystem. The Assembly floor analysis includes substantial description and analysis of SB 1 X7.

B. SB 2 X7: The Water Bond

SB 2 X7 (Cogdill) placed an \$11.14 billion bond measure on the November 2010 ballot. More information on the specific provisions of the bond can be found at the Assembly Water, Parks & Wildlife Committee's webpage – [Water Bond Reference Page](#).

C. SB 6 X7: Statewide Groundwater Monitoring

SB 6 X7 (Steinberg) created a statewide groundwater elevation program, relying on volunteer agencies overlying each aquifer to report the depth to groundwater. After Schwarzenegger vetoed several groundwater bills in the preceding years, SB 6 X7 represented the first statewide program to monitor groundwater supplies. It did not go as far as previous bills that the Governor had vetoed. It also included limitations on the groundwater monitoring program. SB 6 X7 established a program that, over the years, will create a foundation of information as to the conditions of California's groundwater aquifers.

D. SB 7 X7: Water Conservation – 20 x 2020

SB 7 X7 (Steinberg) culminated a multi-year effort to expand water conservation in California. In February 2008, Governor Schwarzenegger called for Californians to reduce their urban water use by 20% by 2020 (20x2020). Over the next year, bills by then-Assemblymen Laird and Feuer proposed to implement the Governor's call. The bill that passed adopted the 20x2020 objective for urban agencies and created an agricultural water management program. The 20x2020 program provided flexibility for urban water suppliers in achieving that objective, to allow for agencies' previous water conservation efforts. Since passage, several urban water agencies have reported that they already have complied with the 20x2020 objective, although the reasons for their success may not be related to water conservation efforts arising out of the legislation.

E. SB 8 X7: Water Rights Reporting & Enforcement

SB 8 X7 (Steinberg) addressed several issues related to water rights reporting and enforcement, as well as appropriated \$579 million from bond funding for actions in the Delta. On water use reporting, the bill removed a long-standing exemption for Delta water users to report their water use and imposed significant penalties for failure to report. These penalties resulted in many more water users across the state reporting their water use. The \$579-million appropriation directed state funding to Delta levees, drought response (through Integrated Regional Water Management), and development of BDCP.

II. Development of Principles for Developing a Water Bond

After the Legislature postponed the election on the water bond to 2014, discussions among stakeholders about how to reformulate the water bond continued. This past winter, Senate committees held hearings on topics related to the water bond. In February, the Senate hearing addressed "California's Debt Condition: Priming the Pump for a Water Bond." In March, the hearing addressed "What's Changed Since the Legislature Passed the Safe, Clean, and Reliable Drinking Water Supply Act of 2010?" The Senate now has two water bond bills that remain in the Senate Natural Resources & Water Committee (SB 40/Pavley and SB 42/Wolk). The Assembly Water, Parks & Wildlife Committee authored a bill, AB 1331, requiring studies of the financial needs in three issue areas – the Delta, safe drinking water, and water infrastructure.

A. Water Bond Working Group – Member Briefings on Water

In May, Assembly Speaker John Pérez appointed a working group in the Democratic caucus, to lead a program to brief Democratic Assemblymembers on the water bond and water issues generally. The Speaker also stated publicly that work on the water bond would not start until after passage of the budget. He appointed Assemblymember Anthony Rendon to chair the Water Bond Working Group (Working Group). Working Group members organized water policy briefings for their colleagues from their regions. Briefings included speakers and discussion about water policy and the potential needs for water bond funding.

B. Proposed Principles: Issues for Consideration

Drawing on these briefings and discussions, the Water Bond Working Group began discussing principles for developing a water bond after passage of the State Budget. The Working Group then identified priorities and accountability measures for developing a water bond that would gain the support of 2/3 of the Legislature and the voters. The Working Group's proposed principles (the Principles) accompany this background paper and may be found at:

<http://awpw.assembly.ca.gov/waterbondreferencedocuments>

The Principles raise issues for further consideration by the Legislature and stakeholders. They are intended to start a statewide discussion about the future of California water and how Californians finance the water infrastructure they need. Legislators may use the Principles as the foundation for a conversation with their constituents. The water community may use them to frame their discussions and their interaction with the Legislature. The Principles are the beginning of the discussion, not the conclusion.

1. Priorities for Water Bond Funding

The Working Group identified priorities that have emerged as critical to California's water future. The Working Group's proposed priorities arise out of discussions in the Legislature, the water community and the state at large. Water community organizations have adopted water bond priorities. The Principles reflect some of the most important challenges and issues to building California's future for effective management of its water resources. These priorities include:

- The Delta
- Regional Self-Reliance/Integrated Regional Water Management
- Safe Drinking Water for All Californians (especially for disadvantaged communities)
- Health of California's Watersheds (especially for salmon)
- Water Conservation and Water Reuse
- Water Storage – surface and groundwater
- Balance Between Existing and New Infrastructure

These priorities may raise issues as to the amount of the need, their relative priority, and the structure of the funding allocations. The priorities also may raise questions as to the underlying policy. Discussions about the water bond – inside and outside the Capitol – have included many questions about what a new water bond might include and how it implements State water policy. In some cases, the 2009 Delta/Water Legislation may provide a policy framework. Or the underlying policy may have evolved since 2009. Policy may appear in the bond or may be developed in independent legislation. Any legislation signed by the Governor before the voters

approve the bond in November 2014 may provide the basis for interpreting the bond's language. Specifically, the priorities may raise the following questions:

- *The Delta:* How does the bond funding implement the 2009 Delta/Water Legislation, including the Coequal Goals? Does the bond fund ecosystem restoration connected to the BDCP (*i.e.* the required Natural Community Conservation Plan for the Delta tunnels)? Does bond funding support Delta County efforts to improve conditions in the Delta? Does the bond implement operational assurances for the Delta tunnels?
- *Regional Self-Reliance:* How does bond funding support state policy on reducing reliance on Delta water exports, in statute and in the new Delta Plan? Does bond funding support development of new technology and local water resources, such as stormwater capture? Does bond funding incentivize water agencies to collaborate in deciding water infrastructure funding priorities for their entire region?
- *Safe Drinking Water:* Can the bond funding clean up the unsafe drinking water suffered by the small, disadvantaged communities discussed in the Assembly in recent years? Which agency has responsibility for making this funding available to disadvantaged communities?
- *Health of California's Watersheds:* Does the bond protect the coastal and inland waterways on which the iconic salmon depend? Will the bond protect North Coast rivers from further diversions? Will the bond fund water infrastructure that addresses its effects on fishery habitat? Does bond funding support water management efforts in upper watersheds?
- *Water Conservation/Reuse:* Does the bond fund specific technology for increasing water-use efficiency? How do water conservation and reuse programs relate to regional water governance and self-reliance? How does bond funding relate to 20x2020?
- *Water Storage:* Do the terms of the current "Statewide Water System Operational Improvement" chapter, such as continuous appropriation, still apply? How does the bond define "public benefits" of water storage? Does the bond fund storage projects that partially benefit local or regional needs? Does the bond fund only "statewide" water storage? How does bond funding protect the State's interests in storage projects? Who controls the State's "public benefits?" How does bond funding improve regional governance and management of groundwater storage resources?
- *Existing/New Infrastructure:* Does the bond pay for rehabilitation or improvement of existing infrastructure? Does the bond fund existing regional water infrastructure?

These questions only begin the discussion about developing the water bond, but they reflect a different approach to the bond's development – a focus on the priorities for the future of California's water at the start of the process. The priorities and the questions they engender emphasize the ultimate objectives of water bond funding, not the specific projects that specific stakeholders request. As is often advocated in water debates, they "put policy before plumbing."

2. Accountability

The Working Group concluded that the next bond needs to be crafted to assure voters that the use of bond funding will be used carefully for the state's water needs. The 2009 water bond bill received public criticism for some of the specific allocations. The 2010 bill postponing the water bond bill deleted certain provisions from the bond. The Principles therefore start with a prohibition on earmarks to specific water infrastructure projects and a commitment to competitive processes for funding decisions. The accountability provisions also include a policy favoring regional water management, so that decisions as to funding priorities may be made among many agencies within each region. The Principles also propose to leverage other funding resources and repurpose authorized funding from previously approved water-related bonds.

3. Assurances

The 2014 Water Bond included several provisions that assured certain stakeholders as to how the bond funding may affect their interests. The Principles specify two of those assurances to be retained, as an important part of developing a new water bond:

- respect for existing water rights, including area-of-origin protections
- prohibition on bond funding for construction or mitigation of any new water conveyance facility in the Delta