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Proposition 1: Water Quality, Supply, and Infrastructure Improvement Act of 2014

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Proposition 1:
Water Quality, Supply, and Infrastructure Improvement
Act of 2014

Initiative Statute

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I. EXECUTIVE SUMMARY

Proposition 1, the *Water Quality, Supply, and Infrastructure Improvement Act of 2014*, will authorize \$7.5 billion in bond funding if approved by a majority of voters.¹ The funds must be spent according to certain criteria and include projects designed to: increase water storage, watershed protection, and improvements to groundwater and flood protection.² This bill replaces a similar water bond that was scheduled to appear on the November ballot that would have authorized \$11.1 billion in bond spending for water related projects.³

A **YES** vote means the state could sell \$7.1 billion in general obligation bonds as well as redirect \$425 million in unsold bonds previously approved by voters for various water related projects.⁴

A **NO** vote means the state could not sell \$7.1 billion in general obligation bonds and redirect \$425 million in unsold bonds previously approved by voters for various water related projects.⁵

II. THE LAW

California has one of the most complex water systems in the entire world.⁶ It is responsible for delivering approximately 40,000,000 acre-feet of water throughout the state for a variety of interrelated purposes such as drinking water, agriculture, and floodshed protection.⁷ State, federal, and local agencies all play a role in California's water operation--in total, these agencies spend approximately \$30 billion dollars annually for maintenance and operation.⁸ A majority of funding for this massive endeavor comes from the thousands of local entities (including private water utilities) throughout the state, accounting for 84 percent of total spending.⁹ The state comes in second by a wide margin at 12 percent, and the federal

¹ See CAL. CONST., art. II, § 10 (providing that a statewide ballot measure can be approved by a majority vote of the people).

² *California Proposition 1, Water Bond (2014)*, BALLOTPEdia, [http://ballotpedia.org/California Proposition 1, Water Bond \(2014\)](http://ballotpedia.org/California_Proposition_1,_Water_Bond_(2014)) (last visited Oct. 6, 2014) [“*California Proposition 1, Water Bond (2014)*”].

³ *Id.*

⁴ *Proposition 1 – Water Quality, Supply, and Infrastructure Improvement Act of 2014*, LEGISLATIVE ANALYST’S OFFICE (Aug. 22, 2014), available at <http://www.lao.ca.gov/ballot/2014/prop-1-110414.pdf>.

⁵ *Id.*

⁶ Andrew Maddocks, Paul Reig, & Francis Gassert, *Drought Is Only One Explanation for California’s Water Crisis*, WORLD RESOURCES INST. (Mar. 27, 2014), <http://www.wri.org/blog/2014/03/drought-only-one-explanation-california%E2%80%99s-water-crisis>.

⁷ MARION JENKINS ET AL, *Optimization of California’s Water Supply System: Results and Insights*, 271-280, J. WATER RESOURCES PLANNING & MANAGEMENT.

⁸ ELLEN HANAK ET AL, *PAYING FOR WATER IN CALIFORNIA*, 3 (Public Policy Institute of California, 2014).

⁹ *Id.*

government in last place at 4 percent.¹⁰ State financial support of water projects primarily comes in the form of bonds.¹¹

Since 2000, California voters have approved four bond measures that totaled \$19.6 billion in general obligation bond funding.¹² Proposition 84(2006) was the largest of the four bonds and was passed in the wake of hurricane Katrina, it authorized \$5.4 billion in general obligation bonds for water and flood control projects.¹³ Past water bonds did not prioritize funding for water supply or clean drinking water, instead about 75 percent of the funds were spent on flood protection, parks and public access, and flood protection.¹⁴ On the other hand, the proposed water bond allocates nearly 60 percent of the funds towards water supply and ensuring communities have clean drinking water.¹⁵

A. Path to the Ballot

In October of 2009, the *Safe, Clean, and Reliable Drinking Water Supply Act of 2010* was introduced in the Senate.¹⁶ The bill was approved by the Legislature and the subsequent bond measure was scheduled to appear on the 2010 ballot as Proposition 18; it would have authorized \$11.1 billion in bond funding for various statewide water projects.¹⁷ However, Governor Schwarzenegger raised concerns about referring the bond measure to the voters in the midst of the budget crisis and urged legislators to focus on, “[S]olving the deficit, reforming out-of-control pension costs and fixing our broken budget system....”¹⁸ Ultimately, Governor Schwarzenegger’s concerns were heeded and the legislature voted to postpone the bond vote until 2012.¹⁹

In January of 2012, Governor Brown raised similar concerns about the viability of passing the \$11.1 billion water bond in the midst of a budget crisis.²⁰ Governor Brown was particularly concerned with the water bond’s chance of passing on the same ballot as Proposition

¹⁰ *Id.*

¹¹ *Id.*

¹² UC Davis Center for Watershed Sciences, *Beyond Bonds: Funding the governor’s Water Action Plan*, CAL. WATERBLOG (June 5, 2014), <http://californiawaterblog.com/2014/06/05/beyond-bonds-funding-the-governors-water-action-plan/>.

¹³ Rodney Smith, *Is Relying on the 2014 Water Bond To Help Fund California’s Bay Delta Conservation Plan a Good Bet?*, HYDROWONK BLOG (Aug. 18, 2013), <http://hydrowonk.com/blog/2013/08/08/is-relying-on-the-2014-water-bond-to-help-fund-californias-bay-delta-conservation-plan-a-good-bet/>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *California Proposition 1, Water Bond (2014)*, *supra* note 2.

¹⁷ *Id.*

¹⁸ Lisa Lien-Mager, *Schwarzenegger, Legislators Seek Delay on Water Bond*, ASS’N CAL. WATER AGENCIES (June 30, 2010), <http://www.acwa.com/news/water-supply-challenges/schwarzenegger-legislators-seek-delay-water-bond>.

¹⁹ *California Proposition 1, Water Bond (2014)*, *supra* note 2.

²⁰ *Id.*

30, a controversial measure that would increase taxes on high income earners.²¹ Senator Wolk echoed Brown's concerns, saying, "It is critically important that we focus on the revenue measure [Proposition 30]. We are faced with a tax levy in November. It would be disastrous to have [the borrowing] on the ballot."²²

Among public requests from Governor Brown to postpone the water bond and a lack of the bi-partisan support required, the Legislature voted to postpone the bond a second time, until 2014.²³

In June of 2014, Governor Brown called on the legislature to replace the \$11.1 billion bond with a "leaner" \$6 billion bond.²⁴ He called the previous water bond "a pork-laden water bond . . . with a price tag beyond what's reasonable or affordable."²⁵ The Legislature, specifically Central Valley Republicans, felt the \$6 billion bond was inadequate to provide funding for much needed reservoirs and water storage.²⁶ Working in conjunction with Governor Brown, the Legislature enacted Assembly Bill (A.B.) —1471 a \$7.5 billion measure that assuaged Republican desires for water storage projects that kept the bond size reasonable.²⁷ In August of 2014 the legislature passed the water bond with almost unanimous support and it was signed by Governor Brown shortly thereafter.²⁸

Voters will have the opportunity to decide whether to invest in this bond measure against the backdrop of one of the states most severe droughts on record.²⁹ Assembly Bill 1471, the *Water Quality, Supply, and Infrastructure Improvement Act of 2014* will appear on the November ballot as Proposition 1.³⁰

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²¹ Anthony York, *Jerry Brown says November water bond vote might need to be delayed*, L.A. TIMES, Jan. 19, 2012, <https://web.archive.org/web/20140808152200/http://latimesblogs.latimes.com/california-politics/2012/01/jerry-brown-water-bond.html>.

²² Patrick McGreevy, *California Legislature Pulls Water Bond Off Fall Ballot*, L.A. TIMES, July 6, 2012, <http://articles.latimes.com/2012/jul/06/local/la-me-water-bond-20120706>.

²³ *Id.*

²⁴ Scott Detrow, *Brown Wades Into Water Bond Debate*, KQED NEWS (Aug. 6, 2014), <http://blogs.kqed.org/newsfix/2014/08/05/brown-wades-into-water-bond-debate>.

²⁵ *Id.*

²⁶ Juliet Williams, *California Water Bond Signals Historic Compromise*, THE DESERT SUN, Aug. 14, 2014, <http://www.desertsun.com/story/news/nation/california/2014/08/15/california-state-water-bond/14096953/>.

²⁷ *Id.*

²⁸ *California Proposition 1, Water Bond (2014)*, *supra* note 2.

²⁹ LATHAM & WATKINS, MASSIVE CALIFORNIA WATER BOND SLATED FOR NOVEMBER 4 GENERAL ELECTION AS PROPOSITION 1 (Sept. 4, 2014), available at <http://www.lw.com/thoughtLeadership/lw-california-water-bond-proposition-2014>.

³⁰ *Id.*

B. Proposed Law

1. Authorization of \$7.5 Billion in Bond Funding

The enactment of Proposition 1 would repeal the \$11.14 billion bond and replace it with the *Water Quality, Supply, and Infrastructure Improvement Act of 2014* (Water Bond).³¹ The Water Bond provides \$7.5 billion in general obligation bond funding for various water-related programs.³² The majority would come from additional \$7.1 billion bond funding while another \$425 million from redirected bonds that were previously approved for water related projects, for a total of \$7.5 billion.³³ The funds must be dispersed according to the specific uses set forth in figure 1.³⁴

Figure 1	
Uses of Proposition 1 Bond Funds	
<i>(In Millions)</i>	
Water Supply	\$4,235
• Dams and groundwater storage—cost share associated with public benefits.	\$2,700
• Regional projects to achieve multiple water-related improvements (includes conservation and capturing rainwater).	810
• Water recycling, including desalination.	725
Watershed Protection and Restoration	\$1,495
• Watershed restoration and habitat protection in designated areas around the state.	\$515
• Certain state commitments for environmental restorations.	475
• Restoration programs available to applicants statewide.	305
• Projects to increase water flowing in rivers and streams.	200
Improvements to Groundwater and Surface Water Quality	\$1,420
• Prevention and cleanup of groundwater pollution.	\$800
• Drinking water projects for disadvantaged communities.	260
• Wastewater treatment in small communities.	260
• Local plans and projects to manage groundwater.	100
Flood Protection	\$395
• Repairs and improvements to levees in the Delta.	\$295
• Flood protection around the state.	100
Total	\$7,545

³¹ *Proposition 1 – Water Quality, Supply, and Infrastructure Improvement Act of 2014*, LEGISLATIVE ANALYST’S OFFICE (Aug. 22, 2014), available at <http://www.lao.ca.gov/ballot/2014/prop-1-110414.pdf>.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

2. Major Elements of Allocation

a. Dams and Groundwater Storage

The Water Bond would authorize \$2.7 billion as a continuous appropriation for water storage by the California Water Commission(CWC).³⁵ Continuous appropriations are not subject to the annual legislative budget process, they would bypass the Legislature and go directly to the CWC for eligible projects of their choosing.³⁶

The CWC is an existing commission that advises the Department of Water Resources(DWR), approves rules and regulations, and monitors and reports on the State Water Project.³⁷ Members of the nine person commission are appointed by the governor, subject to senate confirmation.³⁸ Two of the members of the CWC are chosen based on their general knowledge of the environment and the remaining seven are chosen based on “general expertise related to the control, storage, and beneficial use of water.”³⁹ Each CWC member is paid \$100 per day when engaged in their duties.⁴⁰

The CWC has discretion to decide which projects to fund, however the projects are selected through a competitive public process and must include certain public benefit factors.⁴¹ These public benefit factors are: ecosystem improvements, water quality improvements, flood control benefits, emergency response, and recreational purposes.⁴²

Though several projects will be considered, currently there are four major reservoir projects that are under review, any of which may or may not be selected by the commission.⁴³

- The Sites Reservoir in Colusa County, which will cost \$3.8 billion and provide a 164,000 acre-feet of water increase.⁴⁴
- The Temperance Flat Reservoir on the San Joaquin River, which will cost \$2.5 billion and provide a 76,000 acre-feet of water increase.⁴⁵
- The raising of Shasta Dam to increase capacity, which will cost \$1.2 billion and provide a 75,000 acre-feet of water increase.⁴⁶

³⁵ Cal. Proposition 1 at § 79750 (2014).

³⁶ See DEPT. OF FIN., GLOSSARY OF BUDGET TERMS, available at http://www.dof.ca.gov/html/bud_docs/glossary.pdf.

³⁷ Home, CAL. WATER COMMISSION, <https://cwc.ca.gov/Pages/Home.aspx> (last visited Oct. 6, 2014).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ CAL. WATER CODE § 157 (as added by Proposition 1).

⁴¹ *Proposition 1 – Water Quality, Supply, and Infrastructure Improvement Act of 2014*, LEGISLATIVE ANALYST’S OFFICE (Aug. 22, 2014), available at <http://www.lao.ca.gov/ballot/2014/prop-1-110414.pdf>.

⁴² *Id.*

⁴³ Matt Weiser & Jeremy B. White, *Should California Build Dams, Reservoirs to Deal With Future Drought?* FRESNO BEE, June 1, 2014, http://www.fresnobee.com/2014/06/01/3956458_should-calif-add-new-dams.html?rh=1.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

- The raising of Los Vaqueros Dam in Contra Coast County, which will cost \$1 billion and provide a 20,000 acre-feet of water increase.⁴⁷

The projected increases in water supply are based off average year rainfall.⁴⁸ The increased water supply is measured in acre-feet of water, roughly the size of a football field covered in one foot of water.⁴⁹ California’s integrated water system manages over 40,000,000 acre-feet of water per year; a typical family uses two acre-feet of water per year.⁵⁰

Prior to dispersing funds for a project, the CWC must hold a public meeting for comment and review, complete and file all feasibility reports related to the project, and submit their findings of the public benefit factors to the legislature.⁵¹ The Water Bond states that any state agency who receives funds under this bill is subject to random audit by the Department of Finance.⁵² Should the Department of Finance find any signs of “impropriety” in the agencies operations, the agency will be subject to a full and complete review.⁵³

Further, fund recipients(usually local governments) must match the total cost of the project by at least 50%.⁵⁴ Local governments would likely pay these costs over time through revenue generated from ratepayers as reflected in their water and sewer bills.⁵⁵ Fiscal implications on local governments who qualify for funds are detailed below.

b. Watershed Protection and Restoration

The Water Bond would allocate \$1.5 billion for grants and loans for watershed⁵⁶ protection and restoration projects.⁵⁷ The Legislature would approve the funding and then disperse it to various conservancies and state agencies for projects in accordance with that agency’s function.⁵⁸

⁴⁷ *Id.*

⁴⁸ MARION W. JENKINS ET AL., OPTIMIZATION OF CALIFORNIA’S WATER SUPPLY SYSTEM: RESULTS AND INSIGHTS, 271–80 (2004).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ CAL. WATER CODE § 79755 (as added by Proposition 1).

⁵² CAL. WATER CODE § 79708 (as added by Proposition 1).

⁵³ *Id.*

⁵⁴ *Proposition 1 – Water Quality, Supply, and Infrastructure Improvement Act of 2014*, LEGISLATIVE ANALYST’S OFFICE (Aug. 22, 2014), available at <http://www.lao.ca.gov/ballot/2014/prop-1-110414.pdf>.

⁵⁵ CAL. SEC’Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY, NOVEMBER 4, 2014, at 2, available at <http://vlg.cdn.sos.ca.gov/2014/general/en/pdf/proposition-1-title-summary-analysis-v2.pdf> [“NOVEMBER 2014 VOTER GUIDE”].

⁵⁶ LATHAM & WATKINS, *supra* note 29 (defining a watershed as an area or ridge of land that separates waters flowing to different rivers).

⁵⁷ *Id.*

⁵⁸ *Id.*

Local conservancies throughout the state would receive an aggregate total of \$327 million in funding.⁵⁹ Conservancies work with local government agencies and non-profits to accomplish projects that improve and protect local natural resources under their control.⁶⁰ Notably, the State Coastal Conservancy will receive \$100 million in bond funds which is about twice its annual operating budget for their projects.⁶¹ In 2012, the State Coastal Conservancy used its budget on projects such as: construction of off-stream storage facilities to benefit salmon; improvements to hiking and biking trails; and purchases of undeveloped lots for scenic preservation.⁶²

Various state agencies would receive funds to preserve and maintain marine life.⁶³ The Wildlife Conservation board would receive \$320 million in funding to enhance stream flows, protect urban creeks, and fund watershed projects.⁶⁴ The Department of Fish and Wildlife would receive \$87.5 million for projects relating to the delta and \$285 million for non-delta watershed protection projects.⁶⁵

Significantly, the Natural Resources Agency would administer \$475 million for projects that would support state funding obligations to the San Joaquin River Restoration Act and the Central Valley Project Improvement Act.⁶⁶ The San Joaquin River Restoration Act aims to restore and maintain fish populations in the main stem of the San Joaquin River.⁶⁷ The Central Valley Project Improvement Act strives to protect fish and wildlife in the Central Valley, increase water-related benefits to the State of California, and contribute to long term efforts to protect the San Joaquin Delta Estuary.⁶⁸

c. Groundwater Sustainability

The Water Bond would authorize \$900 million in grants and loans for projects that prevent or clean up groundwater contamination that serve as a source of drinking water.⁶⁹ These funds are approved by the legislature and then directed to the State Water Resources Control Board for application to specific projects.⁷⁰

⁵⁹ *Id.*

⁶⁰ *About the Conservancy*, ST. CAL. COASTAL CONSERVANCY, <http://scc.ca.gov/about/> (last visited Oct. 6, 2014).

⁶¹ *Id.*

⁶² *Id.*

⁶³ LATHAM & WATKINS, *supra* note 29.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Home*, SAN JOAQUIN RIVER RESTORATION PROGRAM, <http://www.restoresjr.net/> (last updated Aug. 26, 2014).

⁶⁸ *Reclamation: Managing Water in the West*, U.S. BUREAU RECLAMATION, http://www.usbr.gov/mp/cvpia/title_34/public_law_complete.html (last visited Oct. 6, 2014).

⁶⁹ *Proposition 1 – Water Quality, Supply, and Infrastructure Improvement Act of 2014*, LEGISLATIVE ANALYST’S OFFICE (Aug. 22, 2014), available at <http://www.lao.ca.gov/ballot/2014/prop-1-110414.pdf>

⁷⁰ *Id.*

Projects would be prioritized based on specific criteria including: threat to groundwater, potential for the spreading of groundwater contamination, potential for enhanced water supply reliability, potential to recharge high-use ground water basis, and projects when responsible parties for past contamination have not been identified or are unable to pay for cleanup.⁷¹

The Water Bond stipulates that 10% of these funds shall be allocated to severely disadvantaged communities. The Proposition considers communities with an annual median household income that is less than 80 percent of the statewide annual median household income to be severely disadvantaged.⁷²

d. Regional Water Reliability

The Water Bond would allocate \$810 million to grants and loans for projects that are included in an integrated regional water management plan.⁷³ Generally, the Legislature would disperse money to state agencies during the budget process in order to fund qualified projects.⁷⁴ Projects already part of the integrated regional water management plan include, but are not limited to, promotion of water reuse and efficiency, underground water storage projects, regional conveyances, and water desalination projects.⁷⁵ Applicants would be required to show how the project would address regional risks to water supply and water infrastructure arising from climate change.⁷⁶ Applicants, excluding disadvantaged communities, would be required to fund 50% of the total cost of the project.⁷⁷ At least \$81 million must be dispersed to disadvantaged communities.⁷⁸

e. Water Recycling

The Water Bond would authorize \$725 million in grants and loans for water recycling and advanced treatment technology projects.⁷⁹ These projects include, but are not limited to: infrastructure and potable reuse pilot projects, research and development, and desalination.⁸⁰

Projects approved for water recycling would be subject to appropriation by the Legislature.⁸¹ In choosing which projects to fund, these criteria must be considered by the Legislature: water supply improvement, decreased reliance on the Delta, public health benefits, cost effectiveness, greenhouse gas emission impacts, and reasonable allocation to eligible

⁷¹ CAL. WATER CODE § 79702 (as added by Proposition 1).

⁷² *Id.*

⁷³ NOVEMBER 2014 VOTER GUIDE, *supra* note 55, at 7.

⁷⁴ *Id.*

⁷⁵ SENATE FLOOR, COMMITTEE ANALYSIS OF AB 1471: WATER QUALITY, SUPPLY, AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014 (Aug. 13, 2014), *available at* http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1451-1500/ab_1471_cfa_20140813_192610_sen_floor.html.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ LATHAM & WATKINS, *supra* note 29.

⁸⁰ *Id.*

⁸¹ CAL. WATER CODE § 79765 (as added by Proposition 1).

projects throughout the entire state.⁸² Like funding awarded for regional water reliability, applicants would be required to match 50% of the total cost of the project, but this requirement can be waived for disadvantaged communities.⁸³

f. Clean Drinking Water

The Water Bond would allocate \$520 million in grants and loans for projects to, “Ensure access to clean, safe, reliable, and affordable drinking water for California’s communities.”⁸⁴ Water districts and local agencies requesting funds for these projects are subject to appropriation from the legislature.⁸⁵ Priority is given to projects that provide treatment for contamination, increase access to alternate drinking water sources, or provide water for disadvantaged communities whose drinking water is currently impaired by hazardous chemicals.⁸⁶

g. Flood Management

The Water Bond would authorize \$395 million in grants and loans for statewide flood management projects that provide public safety benefits as well as enhance fish and wildlife habitats.⁸⁷ The CVFPB was created in 1911 and granted certain regulatory authority to reduce the risk of flooding within California’s Central Valley.⁸⁸ The board is comprised of seven members that are appointed by the Governor and subject to senate confirmation.⁸⁹ Their jurisdiction spans the entirety of California’s Central Valley and they work in conjunction with the Department of Water Resources and the U.S. Army Corps of Engineers.⁹⁰

The Central Valley Flood Protection Board(CVFPB) would be instructed to coordinate a sizeable amount of money (\$4.8 billion) from previous propositions related to flood control for projects under this classification.⁹¹ The delta region would receive exclusive access to \$295 million of these funds, which will go to projects that reduce the risk of levee failure and flooding.⁹² Eligible projects under this classification would include levee maintenance and improvements, emergency repair and response, and special flood protection projects.⁹³

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Proposition 1 – Water Quality, Supply, and Infrastructure Improvement Act of 2014*, LEGISLATIVE ANALYST’S OFFICE (Aug. 22, 2014), available at <http://www.lao.ca.gov/ballot/2014/prop-1-110414.pdf>

⁸⁵ CAL. WATER CODE § 79720 (as added by Proposition 1).

⁸⁶ *Id.*

⁸⁷ *Proposition 1 – Water Quality, Supply, and Infrastructure Improvement Act of 2014*, LEGISLATIVE ANALYST’S OFFICE (Aug. 22, 2014), available at <http://www.lao.ca.gov/ballot/2014/prop-1-110414.pdf>.

⁸⁸ STRATEGIC PLAN 2013–2017, CAL. CENT. VALLEY FLOOD PROT. BD. (2013), available at http://www.cvpfb.ca.gov/strategicplan/2013/9012013_CVFPB_Strategic_Plan.pdf.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ CAL. WATER CODE § 79780 (as added by Proposition 1).

⁹² LATHAM AND WATKINS, *supra* note 29.

⁹³ *Id.*

3. Fiscal Effects

At the state level, Proposition 1 would allow \$7.1 billion in borrowing by selling general obligation bonds to investors, who would be repaid with interest from the state's general tax revenues.⁹⁴ The cost to taxpayers would average about \$360 million annually over the next 40 years.⁹⁵ This estimate assumes that the interest for the bonds would be slightly over 5%, that they would be sold over the next 10 years, and they would be repaid over a 30-year period.⁹⁶ For perspective, this amount is roughly one-third of one percent of the state's current General Fund budget, totaling \$14.4 billion over 40 years.⁹⁷

Local government savings related to water projects are likely to average a couple hundred million dollars annually over the next few decades.⁹⁸ However, effects at the local level are harder to predict due to the various ways local governments might use their savings.⁹⁹ In some cases, the availability of state bonds could reduce local spending because it would replace money the local government would have spent anyways.¹⁰⁰ However in other cases, state bonds could motivate local agencies to build substantially larger projects than they would otherwise.¹⁰¹ These projects would be create higher maintenance and operating costs that are not covered by the bond measure.¹⁰²

III. DRAFTING ISSUES

There do not appear to be drafting issues concerning Proposition 1 because the bond measure will fund existing programs and agencies that have already been operating.

IV. CONSTITUTIONAL BASIS

A bond is a debt investment by an investor who loans money to a corporation or government to finance various projects. If the Water Bond passes, the government would have the authority to enter the marketplace and sell bonds that will be paid back over time and with interest from the General Fund.¹⁰³ The California Constitution requires the Legislature to pass a bond act by a two-thirds vote in each legislative chamber.¹⁰⁴ Once the bond act passes the Legislature it is referred to the voters who must pass it by a majority vote.

⁹⁴ *Proposition 1 – Water Quality, Supply, and Infrastructure Improvement Act of 2014*, LEGISLATIVE ANALYST'S OFFICE (Aug. 22, 2014), available at <http://www.lao.ca.gov/ballot/2014/prop-1-110414.pdf>

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ SENATE FLOOR, COMMITTEE ANALYSIS OF AB 1471: WATER QUALITY, SUPPLY, AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014, at 7 (Aug. 13, 2014), available at http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1451-1500/ab_1471_cfa_20140813_192610_sen_floor.html.

¹⁰⁴ CAL. CONST., art. XVI, § 1.

V. PUBLIC POLICY CONSIDERATIONS

A. Proponents Main Arguments

There are three large scale organizations (among others) that have been very vocal in their support of Proposition 1. They are the Association of California Water Agencies (ACWA), California Alliance for Jobs, and Western Growers.

1. Mitigation of Economic and Social Impacts of Future Droughts

The water bond allocates \$810 million to respond to climate change and contribute to regional water security.¹⁰⁵ Proponents believe the bond will provide critical funds as the state continues to struggle with one of the most severe droughts in its history.¹⁰⁶ A 2014, University of California Davis study tallied the financial hardships of the drought and included \$810 million from crop revenue loss, \$203 million from the loss of livestock and dairy revenue, and \$454 million to pump groundwater in order to maintain production levels.¹⁰⁷ The study also found the drought will result in a 6.6 million acre-feet reduction in surface water available to agriculture and groundwater pumping will have to replace some of this loss.¹⁰⁸ In addition to the economic loss, the drought has led to the loss of 17,100 seasonal and part-time jobs.¹⁰⁹ Proponents believe the construction of new dams as well as improvements to existing water storage will provide the necessary water storage to mitigate the impact of severe droughts.¹¹⁰ Timothy Quinn Executive Director of the ACWA, commented on the critical need to invest in a comprehensive plan to secure the state's water future:

“The bond will provide investments where we need them—in new surface and groundwater storage projects, regional water reliability, sustainable groundwater management and cleanup, water recycling, water conservation, watershed protection and safe drinking water.”¹¹¹

Proponents claim Proposition 1 represents an important step toward preparing California for our current and future water needs.¹¹²

¹⁰⁵ Cal. Proposition 1 at § 79740 (2014).

¹⁰⁶ Pamela Martineau, *ACWA Hails Legislative Approval of Historic 2014 Water Bond*, ASS'N CAL. WATER AGENCIES (Aug. 13, 2014), <http://www.acwa.com/news/infrastructure/acwa-hails-legislative-approval-historic-2014-water-bond>.

¹⁰⁷ RICHARD HOWITT ET AL., *ECONOMIC ANALYSIS OF THE 2014 DROUGHT FOR CALIFORNIA AGRICULTURE 3* (2014), available at <https://watershed.ucdavis.edu/2014-drought-report>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Martineau, *supra* note 106.

¹¹¹ John Frith, *Alliance Sends Support Letter for Water Bond Bills*, CAL. ALLIANCE FOR JOBS (Aug. 13, 2014), <http://rebuildca.org/alliance-sends-support-letter-water-bond-bills/>.

¹¹² *Id.*

2. *Makes High-Priority Investments in Water Infrastructure*

The Water Bond makes \$260 million available in grants and loans for public water system infrastructure improvements and related actions to meet safe drinking water standards.¹¹³ A 2013 drinking water infrastructure needs survey and assessment by the Environmental Protection Agency (EPA), determined that California needs an estimated \$26.7 billion to improve drinking water transmission, \$8.4 billion for water treatment, and \$6.4 billion for water storage.¹¹⁴ Proponents note that California's water delivery system was built in the mid-20th century and the state's water infrastructure is struggling to keep up with population growth.¹¹⁵ An example of this concern is the aging water main that burst flooding the University of California Los Angeles campus, losing millions of gallons of water.¹¹⁶

Speaking in favor of the Water Bond, the California Alliance for Jobs, Executive Director, James Earp, highlighted that the Water Bond makes smart, high-priority investments in a water delivery system that was built to serve less than half the number of people it struggles to support now.¹¹⁷ He went on to state that approval of the plan will add water storage above and below ground, clean water supplies, and provide funding for critical projects. The water bond provides incentives for water agencies throughout California to collaborate in managing the region's water resources and setting regional priorities for water infrastructure improving regional water self reliance.¹¹⁸ Proponents believe this will enable regions to gain self-sufficiency and increase competition between alternative supply systems and drinking water treatment techniques.¹¹⁹

3. *Helps Disadvantaged Communities*

The Water Bond dictates that \$510 million shall be dispersed to various hydrological regions as identified in the California Water Plan.¹²⁰ It also specifies that the DWR shall use no less than 10% of the funds on disadvantaged communities.¹²¹ Throughout California, there are

¹¹³ SENATE FLOOR, COMMITTEE ANALYSIS OF AB 1471: WATER QUALITY, SUPPLY, AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014, at 2 (Aug. 13, 2014), *available at* http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1451-1500/ab_1471_cfa_20140813_192610_sen_floor.html.

¹¹⁴ U.S. ENVTL. PROT. AGENCY, DRINKING WATER INFRASTRUCTURE NEEDS SURVEY AND ASSESSMENT FIFTH REPORT TO CONGRESS (Apr. 2013), *available at* http://water.epa.gov/grants_funding/dwsrf/upload/epa816r13006.pdf.

¹¹⁵ *Water Information*, ASS'N CAL. WATER AGENCIES, <http://www.acwa.com/content/water-information> (last visited Oct. 8, 2014).

¹¹⁶ Caitlin Owens et. al., *UCLA-Area Water Main Break Spews Millions of Gallons*, L.A. TIMES, July 29, 2014, <http://www.latimes.com/local/la-me-0730-ucla-flood-20140730-story.html#page=1>

¹¹⁷ Frith, *supra* note 111.

¹¹⁸ SENATE FLOOR, COMMITTEE ANALYSIS OF AB 1471: WATER QUALITY, SUPPLY, AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014, at 4 (Aug. 13, 2014), *available at* http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1451-1500/ab_1471_cfa_20140813_192610_sen_floor.html.

¹¹⁹ Frith, *supra* note 111.

¹²⁰ Cal. Proposition 1 at § 79744 (2014).

¹²¹ *Id.*

thousands of small rural communities whose residents are economically disadvantaged without reliable access to clean drinking water.¹²² The systems in these rural communities are unable to afford technical expertise; pay for upgrades to meet regulatory changes; retain qualified operators; meet the demands for long-term operations and maintenance of an aging or inadequate infrastructure; and lack access to capital necessary to fix problems.

For instance, a 2006 study conducted by the State Water Resources Control Board (SWRCB) in Tulare County, CA, found a significant number of wells were found to contained coliform bacteria, fecal coliform bacteria, and nitrates in excess of community drinking water standards.¹²³ The rate based system used in larger metropolitan areas provides additional revenue to generate the funds needed supply systems and water quality control. However, disadvantaged and rural communities do not generate the additional funding necessary improve their infrastructure. Proponents claim the water bond will help resolve this problem by providing the funding rural communities need to update their water systems and meet water quality standards.¹²⁴

B. Opponents Main Arguments

Opponents believe the Water Bond represents a grave and insidious threat to core environmental values and other principles established to protect fisheries and the environment as a whole.¹²⁵ A large number of opponents to the Water Bond have joined in opposition against the bond. The opposition's statement contains fourteen reasons to vote against the water bond, three of which are discussed below.

1. Ushers In a New Era of Big Dams

The water bond allocates \$2.7 billion continuous appropriation funding to water storage projects.¹²⁶ This is the largest appropriation for new dams in the state's history.¹²⁷ The funds will be considered for the construction of dams in Temperance Flat and the Sites Reservoir, and to elevate Shasta Dam.¹²⁸ The \$2.7 billion dollars is only a down payment, the rest of the money is dispersed by the CWC, and is not subject to legislative approval.¹²⁹ Opponents also point out a number of dam projects (including one on Bear River) have been abandoned because of low water yield and financial in-feasibility, are being resurrected due the injection of billions of

¹²² Brian Haddix et al., *Water Assistance for Disadvantaged Communities*, ALL ONE WATER (Jan. 30, 2013), http://www.allonewater.com/WM/WMArticles/Water_Assistance_for_Disadvantaged_Communities_20319.aspx.

¹²³ *Id.*

¹²⁴ Frith, *supra* note 111.

¹²⁵ California Sportfishing Protection Alliance, *Statement of Opposition Proposition 1: Water Quality, Supply and Infrastructure Improvement Act of 2014* (2014), available at <http://calsport.org/news/wp-content/uploads/CSPA-14-Point-Opposition-Prop-1.pdf> ["CSPA Statement"].

¹²⁶ Cal. Proposition 1 at § 79750 (2014).

¹²⁷ CSPA Statement, *supra* note 125.

¹²⁸ Barbara Barrigan-Parrilla, *Proposition 1 adds a big debt for little new water*, MODESTO BEE, Sept. 16, 2014, http://www.modbee.com/2014/09/16/3541955_barbara-barrigan-parrilla-proposition.html?rh=1.

¹²⁹ *Id.*

dollars for dams.¹³⁰ Opponents believe if Proposition 1 is passed they will spend decades fighting proposed dams on rivers throughout the state, wasting even more taxpayers dollars.¹³¹

Kathryn Phillips the director of Sierra Club California, said, “The world is much different today than during the dam-building heyday in the 20th century. Climate disruption has begun and precipitation patterns are already changing. New dams won’t respond to that.”¹³² Rather than see new dams built, opponents would like the state to develop new 21st century methods for water storage and conservation.¹³³

2. *Incorporates Environmentally Damaging Hidden Promises*

Opponents to the Water Bond claim there are numerous environmentally damaging sidebar promises included in the bond.¹³⁴ For example, they note the promise the Governor made to northern San Joaquin Valley legislators that he would use his influence to keep the State Water Board from implementing the flow increases on the San Joaquin River the Board identified as necessary to protect public trust resources.¹³⁵ The State Water Board is looking to increase the unimpaired flow on the river out to the delta by 40%, a move that would require farmers to rely more heavily on pumping groundwater.¹³⁶ The Board as states the river is currently so over-tapped that it runs completely dry in stretches. This threatens the quality of communities' water, endangers fish and wildlife, and creates uncertainty for farmers, leaving communities vulnerable in the face of more frequent and severe droughts.¹³⁷ Opponents also claim they have learned supporters of specific dam projects have been promised the projects they support will receive prioritized funding, including sites at Temperance Flat, Sites Reservoir, and elevating Shasta Dam.¹³⁸

Raising Shasta Dam would flood sacred sites of the Winnemem Wintu people, flood part of the Wild & Scenic McCloud River (which has some of the best fly fishing in the state), and provide almost no benefits for salmon or other fisheries.¹³⁹ Opponents have used these two examples to show not only the environmental concerns surrounding the Water Bond need to be taken into account but also the cultural concern. If these concerns are not address California will suffer environmentally and culturally, opponents claim.

¹³⁰ CSPA Statement, *supra* note 125.

¹³¹ *Id.*

¹³² Op-Ed Kathryn Phillips, *Dams Are Not the Answer to Long-Term Water Woes*, SACRAMENTO BEE, Aug. 19, 2014, <http://www.sacbee.com/2014/08/19/6637290/another-view-dams-are-not-the.html>.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Editorial, *Central Valley Delegation Led Way on California Water Bond*, MERCED SUN STAR, Aug. 13, 2014, <http://www.mercedsunstar.com/2014/08/13/3794563/our-view-central-valley-delegation.html#>.

¹³⁶ *Id.*

¹³⁷ *Tell the California Water Board: A Healthy San Joaquin River Supports a Healthy Economy*, AM. RIVERS, <http://act.americanrivers.org/page/speakout/mer-ca-waterboard?js=false> (last visited Oct. 6, 2014).

¹³⁸ Phillips, *supra* note 132.

¹³⁹ Doug Obegi, *The Era of Big Dams is Still Over (Even With the Water Bond)*, SWITCHBOARD NATURAL RESOURCES DEFENSE COUNCIL STAFF BLOG, Sept. 3, 2014, http://switchboard.nrdc.org/blogs/dobegi/the_era_of_big_dams_is_still_o.html.

3. *Crowds Out Other Critical Investments*

The Water Bond imposes hidden costs by using the General Fund revenues to pay the accumulating interest, crowding out investment money for public schools, roads, and public safety and health.¹⁴⁰ The water bond would add over \$7 billion in taxpayer indebtedness not including the interest.¹⁴¹ California is \$777 billion in debt, with \$128 billion already approved to be taken from the General Fund to repay bonds to taxpayers.¹⁴² Barbara Barrigan-Parrilla, Director of Vote NO on proposition 1, said, “Proposition 1 is a corporate money grab aimed at bankrolling special interests with taxpayer dollars while providing tragically inadequate funding for projects that provide safe, clean water for the people of California.”¹⁴³ Opponents argue the taxpayer dollars that will be spent on finishing the proposed dam projects; Temperance Flat project would cost nearly \$2.5 billion and raising Shasta Dam project would cost \$1 billion.¹⁴⁴ The stored water will go to agribusinesses like Paramount Farms, of Kern County, that already receives subsidies for the water they buy.¹⁴⁵

VI. CONCLUSION

Proposition 1, a compromise measure from the 2009 Water Bond, represents the culmination of bi-partisan effort to invest in the state’s water infrastructure. If passed, Proposition 1 will allow the government to sell bonds in order to fund the various projects designed to restore and clean up the state’s water systems. The water bond will authorize \$7.54 billion to be allocated for the following purposes: \$4.2 billion for water supply, \$1.4 billion for watershed protection and restoration, \$1.4 billion to improvements to groundwater and surface water quality, and \$395 million for flood protection.¹⁴⁶

Proponents claim Proposition 1 ensures a reliable water supply for farms and businesses protecting both the economy and the environment during this severe drought. Among the proponents are many governmental agencies, corporations, and farmers associations. The main thrust of their argument is to avoid further economic and social impact from the drought the state must invest heavily in the water infrastructure so the water needs of everyone can be meet. They believe the best way to accomplish this is by increasing aboveground and belowground water storage, recycling water, and protecting watersheds.

Opponents believe Proposition 1 contains a few worthy projects but they do not justify abandoning important environmental principles and fiscal responsibility. Among the list of opponents are many environmental organizations, who believe Proposition 1 is an outdated

¹⁴⁰ Phillips, *supra* note 132.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Op-Ed Barbara Barrigan-Parrilla, *No On Water Bond*, DESERT SUN, Sept. 6, 2014, <http://www.desertsun.com/story/opinion/readers/2014/09/06/voice-vote-water-bond/15230109/>.

¹⁴⁴ Obegi, *supra* at note 139.

¹⁴⁵ Dan Bacher, *Meet the Resnicks: The Koch Brothers of California Water (2014)*, LA PROGRESSIVE (Sept. 29, 2014), <http://www.laprogressive.com/no-on-prop-1/>.

¹⁴⁶ *Proposition 1 – Water Quality, Supply, and Infrastructure Improvement Act of 2014*, LEGISLATIVE ANALYST’S OFFICE (Aug. 22, 2014), available at <http://www.lao.ca.gov/ballot/2014/prop-1-110414.pdf>.

answer to the relatively new problem of climate change. They argue rather than funding the special interest projects of corporations, like new water storage schemes and a new era of dam building, the state should invest in developing new methods to survive in an ever changing climate.

If the Water Bond passes, the government would have the authority to enter the marketplace and sell bonds that will be paid back over time and with interest from the General Fund.