



How Does this 2010 Water Bond Compare to Past Bonds?

Since 1960, California voters have authorized more than \$44.3 billion (all in 2010 dollars) in general obligation bonds for water-related purposes, with more than half of those funds being approved since 2000. The state legislature recently passed an \$11.1 billion water bond to be put before voters in November of 2010.¹ The proposed water bond, Proposition 18, differs most markedly from past water bonds in several ways:

- 1) It provides significant taxpayer funds for water storage.
- 2) Funding is less targeted to those with the most economic need.
- 3) It allows private entities to join joint powers authorities.

■ PROVIDES SIGNIFICANT TAXPAYER FUNDS FOR WATER STORAGE

Over the last decade, California voters have approved six water-related general obligation bonds. These bonds allocate a total of \$22.5 billion to a variety of funding priorities including land acquisition, watershed protection and restoration, water conservation, and the protection of beaches, bays, and coastal waters. Notably, the funding priorities of these bonds almost completely exclude the construction of additional water storage, and none are intended to pay for the construction or expansion of surface water storage (such as reservoirs or dams).²

One of the most controversial elements of the proposed water bond is related to taxpayer funding of water storage. The proposed water bond allocates \$3 billion to \$4.2 billion³ to the construction of water storage projects (this could include both surface and groundwater storage), accounting for approximately one-third of the total bond amount. The last time California voters approved a general obligation bond to finance the construction of major new water storage was in 1960 when they approved a \$1.8 billion bond to construct the State Water Project (\$12.7 billion in 2010 dollars). However, the conditions for that bond required the State Water Project to be repaid almost entirely by those who used the water (also known as a self-liquidating general obligation bond). This method of repayment ensured that the project was repaid primarily by those who had directly benefited from its construction and operation rather than general taxpayers. This is known as user-funding or beneficiary-pays.

“The case for user-funding for most water system improvements is compelling, both as a matter of equity and fiscal prudence.”

*—State Treasurer
Lockyer, 2009*

In recent recommendations to the California Legislature, the Legislative Analyst’s Office advised that the beneficiary-pays principle be utilized when financing future water infrastructure.⁴ Yet, the potential beneficiaries of the proposed water bond have not been identified and have not signed repayment contracts. Rather, the bond states that up to half of project costs may be funded by taxpayers rather than project users, provided that those funds result in “public benefits.” However, the bond does not answer the critical question: how will “public benefits” be defined and quantified?⁵

■ FUNDING IS LESS TARGETED TO THOSE WITH THE MOST ECONOMIC NEED

The past few water bonds have included mechanisms to target funding to communities with heightened needs for basic water infrastructure, e.g. by setting aside funding for “disadvantaged communities,” or those with a median household income that is less than 80% of the statewide average. The proposed bond broadens the types of communities eligible for these considerations by including a new category of “economically distressed areas” with a higher household income requirement. Additionally, the median household income for this new category can be measured at a larger geographical scale than before. These changes dilute the resources available for those with the most need. For instance, the new category would potentially allow areas with a higher-than-average median household income to receive funding if they are located in a county with an overall low median household income.

■ ALLOWS PRIVATE ENTITIES TO JOIN JOINT POWERS AUTHORITIES

Unlike prior bonds and legislation, this bond gives broad authority for nongovernmental partners to enter into joint powers authorities to “own, govern, manage, and operate a surface water storage project” funded in part by public money. Under the Joint Exercise of Powers Act,⁶ two or more *public agencies* may enter into a joint powers agreement (JPA), allowing them to jointly perform many duties that the agencies can perform individually. For example, the Encina Wastewater Authority operates under a joint powers agreement that allows six public agencies to share in the costs and management of the wastewater facilities, enabling them to afford more advanced facilities than each agency could on its own. The law clearly defines public agencies to include governmental entities, e.g. the state government and its agencies and departments, cities, counties, and other districts. In rare and specific instances, special legislation has allowed entities that are not considered public agencies to enter into JPAs, e.g., individual American Indian tribes and nonprofit hospitals.⁷

But Chapter 8 of the proposed bond authorizes nongovernmental partners to join JPAs that are eligible to receive bond funds. Including nongovernmental entities in JPAs raises several concerns. First, it creates the potential for these entities to benefit from powers traditionally reserved for agencies that are accountable to a constituency. Additionally, nongovernmental entities are not bound by the same transparency laws as public agencies (e.g., the Ralph M. Brown Act, the Public Records Act, and the Political Reform Act). Finally, the bond does not define the term nongovernmental partners, therefore leaving it open to apply to any type of private organization, including for-profit entities. Allowing private entities to join these JPAs may provide greater flexibility in financing the surface storage projects and take pressure off of local communities in coming up with matching funds. However, it also presents the opportunity for private gain from public bond money.

ENDNOTES

1 At the time of writing, there is some question about whether the bond will be withdrawn from the November 2010 ballot. The Governor has proposed delaying a vote on the bond to a later time but the Legislature has not pulled the bond from the ballot.

2 Proposition 13 allocates \$200 million for groundwater storage, or 10% of the total bond amount. Propositions 84 and 50 both allocate \$65 million to planning and feasibility studies for water supply, conveyance, or flood control projects, representing 1% and 2% of the total bond amounts, respectively.

3 A range is provided because only \$3 billion are specifically allocated to water storage projects in Chapter 8 of the bond; however other chapters include funds that could be used for storage, depending on implementation.

4 Legislative Analyst’s Office. 2010. “Financing Water Infrastructure.”

5 Chapter 8 of the proposed bond is the only chapter that clearly defines criteria for determining public benefit, however the chapter does not specify how the potential public benefits (e.g., recreation vs. ecosystem improvements) will be weighted and quantified, leaving those crucial decisions to the California Water Commission.

6 See California Government Code §6500-6536.

7 See California Government Code §6523.4-6524.