



TO: California Land Trusts  
FR: CCLT Board of Directors and Policy Committee  
DT: February 8, 2010  
**RE: Introduction to Water Bond**

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In November, the Legislature passed a series of water-related measures that consisted of four policy bills and one bond. All were signed by the Governor and went into effect January 1<sup>st</sup> except for the water bond which will go to the voters on the November 2010 ballot.

The same month, the CCLT Policy Committee lengthened its regular monthly meetings to 1.5 hours and dedicated the majority of three subsequent meetings to hearing from experts on the policy bills and water bond although more time was spent on the bond. The goal of the Policy Committee was to gather enough data from all sides to present the CCLT Board with an informed recommendation of what position, if any, CCLT should take on the water bond.

In addition to reading a great deal of information, the Policy Committee enlisted the help of several experts who were involved in working to inform, craft, defeat and pass the measures to help understand and answer questions:

- Phil Isenberg, past Legislator and chair of the Delta Vision Foundation (former CCLT contract lobbyist)
- Charlotte Hodde, Water Program Manager for the Planning and Conservation League
- Joe Caves, Principle of Conservation Strategies Group
- Fran Spivy-Weber (Board Member of the State Water Resources Control Board and past CCLT board member)

This memo was presented to the CCLT Board of Directors at its January 28<sup>th</sup> meeting. As a second step, we are providing this to all California land trusts. The CCLT Board is not planning to take a position on the water bond until its April board meeting so that we can see how the campaigns shape up, the continuing media and editorial tenor, polling results, and do more outreach to our members and partners.

**Please share this with your boards of directors and let CCLT know your comments, questions, conclusions and positions (if any). Thank you for your interest and review.**

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**ANALYSIS OF 2010 WATER BOND**

**By**

**CCLT POLICY COMMITTEE**

**January 21, 2010**

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On November 4, 2009, the Legislature passed a comprehensive water package that included an \$11 billion water bond slated for the 2010 ballot. Within hours of its approval by both houses, circulating media stories and press releases clearly defined this as a water bond like no other. It contains billions for delta restoration. It contains billions for key conservation programs of statewide concern. It contains billions for surface storage. And at a time when the state is facing a \$20 billion budget shortfall, the water bond contains billions in additional debt obligation.

Consequently, this bond already has its share of unlikely opponents, and a few unusual allies. Conservation support will likely include the Nature Conservancy. Environmental opposition includes Sierra Club. Trades labor will likely support. Public Unions have threatened to oppose. Water districts will be divided. Legislative Democrats, Republicans and the Governor have all rallied around this measure. The media has been fairly critical, particularly of those aspects of the bond most vital to land and water conservation. And the campaigns are just getting started.

This memo provides a brief background and focuses on the water bond. It is based on a series of meetings with experts that CCLT's Policy Committee conducted from November through January and includes a large section of Q&A based on the key arguments put forward by both supporters and opposition.

**BACKGROUND**

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Year after year, the Legislature has unsuccessfully debated numerous measures to either implement a suite of policy changes in how we manage the Delta while California's water supply remained static, its water infrastructure deteriorated, and the critical Delta ecosystem declined. CALFED emerged in 2000 with a mission to improve the Delta, and the California Bay-Delta Authority plan was adopted by Congress in 2004. In 2006, Governor Schwarzenegger assembled a Delta Vision Blue Ribbon Task Force, led by Phil Isenberg, to create a strategic planning process. The Task Force's work concluded in 2008 with a plan that included a list of recommendations for save California's Delta ecosystem.

Throughout all these years, the federal, state and local governments have spent a great deal of money in and around the Delta. However, the funds have not been spent in pursuit of a coherent,

overall plan but toward piecemeal programs that cater to various interest groups. Further, financing mechanisms suggested by both the Administration and the Legislature have been rejected, and the multiple bonds and citizens' initiatives in the last decade have not provided the billions of dollars in public investment in a coherent plan to address this unique resource.

The water package passed by the Legislature and signed by Schwarzenegger represents the first significant breakthrough on comprehensive policy to address a spectrum of issues relating to groundwater, conservation requirements and water enforcement in the Delta in forty years. The bond provides some of the investment needed to see adopted policies through to their fruition.

Finally, it is important to note that, despite numerous efforts over the last several years in particular, this is the first water bond to be passed by the Legislature in a decade. Previous attempts have largely failed due to some stakeholder demands that funding for surface storage not only be included, but represent a major portion of the overall funding package. This bond provides up to \$4 billion for that purpose.

## **ABOUT THE WATER POLICY PACKAGE**

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While water policy issues are older than California itself, we will focus on the very recent highlights. The Delta is the hub of both a world-class ecosystem and California's water supply. It has been in serious decline for decades and an investment of billions is needed to restore it to a functional ecosystem (not pristine or what it was fifty years ago).

The Delta Vision Blue Ribbon Task Force's 2008 report organized its recommendations around seven recommendations with specific strategies to achieve a healthy Delta and a more reliable water system for Californians:

1. Legally acknowledge the co-equal goals of restoring the Delta ecosystem and creating a more reliable water supply for California.
2. Recognize and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place, an action critical to achieving the co-equal goals.
3. Restore the Delta ecosystem as the heart of a healthy estuary.
4. Promote statewide water conservation, efficiency, and sustainable use.
5. Build facilities to improve the existing water conveyance system and expand statewide storage, and operate both to achieve the co-equal goals.
6. Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and strategic levee investments.
7. Establish a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve these goals.

In Isenberg's view, the water policy package included all seven of these goals although not perfectly – much to his surprise. What passed was not perfect; for example, enforcement was weakened in the final bill by the Legislature. There is currently no agreement upon a clear, single definition of a desired/required ecosystem, and while the policy bill package comes closer than prior law to laying out a desired ecosystem, it fundamentally punts the question to be more fully answered in the Delta Plan to be developed and adopted by the Delta Stewardship Council no later than January 1, 2012.

The five major components of the water policy package are:

- **SBx7 1 (Simitian) – Delta Governance.**

The bill establishes the framework to provide a more reliable water supply to California and restore and enhance the Delta ecosystem. Known as the Delta governance component of the overall package, this measure contains requirements for the creation or re-creation of several Delta governance entities, and provides each with specified duties and authority. The bill repeals the current CalFed Bay-Delta Authority and replaces it with a Delta Stewardship Council, a Delta Conservancy, a reconstituted Delta Protection Commission, a Delta Watermaster, and a Delta Independent Science Board and Delta Science Program. SBx7 1 also sets criteria for the adoption of the results of the Bay Delta Conservation Plan (BDCP), and requires the BDCP to be developed according to the Natural Community Conservation Planning Act.

- **SBx7 2 (Cogdill) – Water Bond.**

This is the \$11.14 billion water bond designed to help the state and local agencies invest in water management upgrades and ecosystem protections. The bond, if approved by voters in November 2010, will provide funding for drought relief, Delta ecosystem restoration, water system operational improvements, groundwater basin clean-up and development, recycled water systems, surface storage facilities, and water conservation. CCLT has prepared a detailed funding breakdown of the Safe, Clean, and Reliable Drinking Water Supply Act of 201 (see appendix).

- **SBx7 6 (Steinberg) – Groundwater Monitoring Program.**

The groundwater monitoring bill establishes a program in the Department of Water Resources to work with local water districts to establish ground water monitoring and includes language making urban and agricultural water suppliers ineligible for a water grant or loan administered by the state unless complying with provisions of the act.

- **SBx7 7 (Steinberg) – Water Conservation.**

The water conservation bill creates a framework for future planning and actions by urban and agricultural water suppliers to reduce California's water use. The measure requires the

development of agricultural water management plans and requires urban water agencies to reduce statewide per capita water consumption 20 percent by 2020. Standardized reporting will be required and, with some exceptions, urban and agricultural water suppliers would be ineligible for state water grants or loans unless they comply with the bill's water conservation requirements.

- **SBx7 8 (Steinberg) – Enforcement.**

The water diversion and use bill amends current law to require reporting of water diversion and use, and adds civil liability and monetary penalties on diverters who fail to submit the required reports. The bill also appropriates \$3.75 million from the Water Rights Fund to hire 25 permanent personnel for the enforcement of water rights at the State Water Resources Control Board.

The water policy package is not perfect and it cannot guarantee ultimate success either in Delta ecosystem health or water supply and reliability. It is Isenberg's assessment that it moves California in the right direction to address these issues.

## **ABOUT THE BOND**

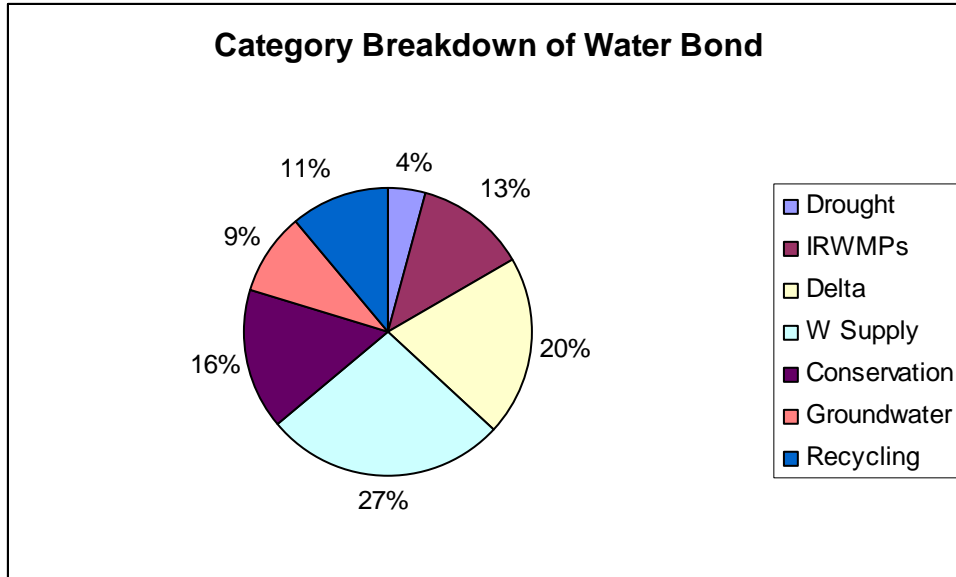
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The Safe, Clean, and Reliable Drinking Water Supply Act of 2010 provides \$11.14 billion for drought relief, water supply and reliability, Delta sustainability, statewide water system operational improvement, groundwater protection and water quality, water recycling, conservation and watershed protection [see Appendix A for complete Summary of Elements].

The major categories of the bond break down as:

\$455 mil	Drought Relief
\$1.4 bil	Water Supply and Reliability (IRWMPs)
\$2.250 bil	Delta Sustainability
\$3 bil	Statewide Water Supply (includes dams)
\$1.785 bil	Conservation and Watershed Protection
\$1 bil	Groundwater Protection
\$1.25 bil	Water Recycling

The measure allows the Treasurer to issue up to \$5.575 billion (approximately half) in bonds before July 1, 2015. The other half could not be issued until after the date.



The water supply element is attracting a lot of attention because it has the potential to fund new surface storage, including dams. The bill identifies four types of projects as eligible for the \$3 billion:

- Surface storage projects identified in the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, except for Shasta and Delta wetlands projects.<sup>1</sup>
- Groundwater storage and groundwater contamination prevention/remediation projects that provide water storage benefits
- Conjunctive use and reservoir reoperation projects
- Regional and local surface storage projects

The bond funds in this category may be expended only for the public benefits of the qualifying water storage projects: “ecosystem improvements, water quality improvements in Delta or other river system, flood control benefits, emergency response, and recreational purposes. Further, within the requirement that the public pays only for public benefits, the bond funds can only pay for half of the public benefits. The \$3 billion is continuously appropriated, but with certain exceptions, the funds cannot be allocated before 12/15/12 and projects are not eligible unless it meets additional requirements by 1/1/18.

Land trusts will be interested in most of the \$1.785 million in the Conservation and Watershed Protection section, although as the summary shows, there is money for economic development, research, fuel reduction and other categories of little or no direct benefit. For numerous state

<sup>1</sup> The Record of Decision identifies five dams: Sites, Shasta, Temperance Flats, Los Vaqueros and Delta wetlands (to flood some delta islands).

agencies and programs with which land trusts have the most interaction and success (WCB, Coastal Conservancy, CFCP, etc.), the dollars are often comparable to Proposition 84. Additional dollars are scattered throughout the bond that could also benefit land trusts (e.g., IRWMP, Delta ecosystems funding).

As a general rule, California land trusts have consistently endorsed resources and water bonds, and usually provide a large amount of funding for the campaigns. Since 2000, California voters have passed five resources and water bonds largely backed and supported by both the conservation community and environmental advocates. While there was minimally-organized and well-funded opposition to the measures, the final votes for the measures have been primarily partisan in nature and clustered along the coast. The measures received a fair cross-section of endorsements and usually garnered major media endorsements along the way. CCLT supported Proposition 84 in 2006 and did not take a position on Proposition 1e (i.e., flood control bond).

The Safe, Clean, and Reliable Drinking Water Supply Act of 2010 is a different kind of bond. As Capitol Weekly reported in November, "the bond's got a little something for everyone." And as more "little somethings" were added to the price tag on the night of its passage, more questions were raised about the timing, need and content of this \$11 billion package.

In addition to its own research, CCLT's Policy Committee enlisted the help of four people close to this issue to help answer these questions – Phil Isenberg, Joe Caves, Fran Spivy-Weber and Charlotte Hodde of the Planning and Conservation League. The following questions were among those posed to one or more of them by CCLT and the Policy Committee over the last three months. Answers are drawn from their responses, various media articles and staff research.

**Q: What happens to the policy package if the bond fails?**

A: There was universal agreement that most aspects of the policy package would continue to move forward. Isenberg notes that there can be some leakage of money from other sources for at least partial implementation of the Delta plan. PCL asserts there is about \$4 billion from other bonds that can be used for Delta policy purposes (including funds to protect against catastrophic levee failure) and land and water preservation. The policy package does specifically guide some existing bond funding (about \$546 million) from Proposition 1e and Proposition 84 to policy implementation.

**Q: What is the likelihood of the surface storage funding going to dams?**

A: Responses vary wildly. Isenberg suggests all the good dam sites are taken, so the money will likely go to heighten/retool dams in some way or for other options. Caves concurs that there only a couple of sites that could really be considered for new dams (Temperance Flats and

Sites<sup>2</sup>), and notes no free-flowing rivers can be dammed under the bond language. Moreover, Caves’ asserts that there is good language within this section of the bond (open competition for projects, public funds can only go to public benefits, etc.) that he predicts that the Department of Water Resources will probably spend a few hundred million on expanding the reservoir at Los Vacaros and another \$500 million on groundwater storage.

While PCL concurs that Sites and Temperance Flats are the most high-profile new dam candidates, they believe politics will carry the day and that the Schwarzenegger-appointed California Water Commission (charged with approving the projects in this Section) will be guided by political philosophy to make new dams a priority. PCL also points to two elements that they argue will favor dams:

- Priority is given to projects with “Recreational purposes, including, but not limited to, those recreational pursuits generally associated with the outdoors”. (Section 79743) This is something that groundwater storage, for example, could not provide even if it competes favorably in other ways.
- “No project may be funded unless it provides ecosystem improvements...that are at least 50 percent of total public benefits of the project funded under this chapter”. (Section 79746) Contrary to what this may appear to suggest, PCL says this requirement aligns with existing state and federal documentation regarding surface storage projects, such as the Upper San Joaquin River Basin Storage Investigation, in which the Bureau of Reclamation suggests that a proposed dam on the San Joaquin would provide \$24.5 million in annually-reoccurring “Ecosystem Benefits – more than 50 percent of the total public benefits of the project.”

Spivy-Weber suggests that the previous points-of-view are the bookends to the campaign. While the bond offers some public funding, it by no means covers the true costs. Dam advocates will have to look for federal government for the real money any new dam would take. However, she believes that any on-stream dam is economically infeasible, and that the difficulties and extraordinary time to construct an on-stream dam are virtually insurmountable. She thinks that raising the existing Los Vacaros will certainly happen with

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<sup>2</sup> Temperance Flats is essentially a second dam behind the existing Friant Dam. Plans indicate that it will be very expensive to build and water would cost farmers about \$1000 an acre foot. Many think this extremely high price means it will not be built. Sites is an off-stream reservoir that would take storm water from the Shasta dam. It would store 1.5 million acre foot but the practical supply will only yield about 200-300 acre foot/year. The price for the water will be in the hundreds of dollars per acre/foot – still too expensive for agricultural buyers. It could be affordable for urban or salmon water.

or without public funds. While it could happen without public funds, she gives Sites (an off-stream reservoir to store storm water from the Shasta reservoir and supplement flows for the Delta) a 50% likelihood.

**Q: If passed, do these funds satisfy the ecosystem fixes needed in the Delta?**

A: No. Isenberg predicts the state would need to spend several billion per year for years to come to do everything. PCL agrees, and has publicly stated they would support a different bond that is much smaller, more tailored and several years out. Caves is also in agreement that the bond doesn't meet all the needs, but both Isenberg and Caves say California has to start somewhere. Isenberg notes bonds are the way to fund capital investments – and that capital investments can't be put off forever. If you let capital construction slide for a while in a highway system, you will pay more in the long-run but the system is still functional. Letting capital improvements slide in a water system in which you can have catastrophic failures, such as levee failures, is a fundamental challenge.

**Q: How does an \$11 billion bond impact the state's current financial crisis?**

A: The Legislative Analyst's Office states that the water bond would create up to \$809mil/year in debt service. Numerous media stories and editorials argue that this is not the time for the state to incur more debt and bemoan the impact this will have on the state's general fund which supports the majority of state services. For example, an editorial in the *Sacramento Bee* on December 16<sup>th</sup> argued "Over the last 10 years, the general fund grew by 22 percent while its debt service payments shot up an astonishing 143 percent. Interest payments on the state's debt topped \$6 billion this year – double that of a decade ago. If bonds are issued at the same rate they have been in the past, our debt payments could grow to more than \$10 billion within a few years, consuming close to 10 percent of the general fund budget." Of course, the percentages of the budget vary according to the level of general fund.

Some of the experts were not convinced. Isenberg says the state has a short-term issue with California's cash flow, and that another bond is not going to make or break the state budget. Caves also believes state finances will eventually catch up and straighten out, and reminded the committee that only half of the bonds within the measure can be sold prior to 2015.

PCL offers a different point of view, and notes that with the economic downturn and the sacrifices Californians have been asked to make to balance the budget, this is not a strategic time to ask for funding that we will not see for years. Further, they argue that siphoning more money for debt service will undoubtedly have an adverse effect on top environmental priorities. PCL cites the 2009-2010 California budget process, which gutted important environmental programs, forced deep cuts to State Parks and eliminated subvention funding for the Williamson Act. Finally, while conservationists hope that the new bond would offer

funding for new environmental projects, recent State Budget experiences suggest that it will not. As their example, PCL cites how Proposition 84 has been used to backfill budget cuts to State Parks, DWR and DFG [Proposition 1e has been used to backfill mandated HCF obligations to WCB and SCC].

**Q: If passed, what are the immediate fiscal impacts, if any, related to existing conservation bond dollars and the bond freeze?**

A: Caves believes the freeze will continue off and on as long as California is stuck in a recession. However, because of existing language within the proposed bond that state that funding for dams can't be sold until dam plans are done (which Caves says won't happen until 2014 or 2015, at the earliest), the first half of the bond appropriation would actually favor the front-loading of conservation dollars.

PCL disagrees. The bond provides a continuous appropriation for the surface storage funding, and they believe this will be the first \$3 billion out, leaving conservancies and land trusts to receive their allocations in the next six years after. Further, since the state has billions of dollars from Prop 84 that have not been appropriated and California cannot currently sell bonds previously authorized by voters because of state's diminished bond rating, it is doubtful that the state would prioritize conservation and restoration before infrastructure funding. [An article published in the *San Jose Mercury News* on January 21st alludes to the latter point as well.]

More troubling, perhaps, may be the Legislature's response to the level of state indebtedness during the recession. Treasurer Lockyer has suggested that rationing and prioritizing of existing bonds could be necessary if the water bond is passed. At the single hearing on the water bond and in subsequent remarks, Legislators have begun to assert that the Legislature should be setting priorities for what bonds are sold when and for which elements.

**Q: How does the bond impact the potential construction of the Peripheral Canal?**

A: There is general agreement that the policy package and bond do not mandate the construction of a Peripheral Canal. Caves notes there is no money included for design, construction or anything related to Delta conveyance facilities (section 79712). PCL notes there is a provision in the language that would require that the canal be paid by direct beneficiaries. Isenberg concludes that the peripheral canal is dependent upon the delta conservation plan going through CEQA, meeting the NCCP standard (approved by F&G), and adoption of a reasonable flow level and review by the independent science board and ultimately the Delta Stewardship Council if any person appeals the F&G determination. The plan is not expected to be released until Schwarzenegger is out of office.

**Q: Are there other “controversies” within the bond relating to conservation interests?**

A: PCL claims that the proposed bond is unprecedented in that it uses taxpayer money to reduce or offset the adverse environmental effects of new water infrastructure projects. They cite specific language in Section 79711 that states “Funds provided by this division shall not be expended to support or pay for the costs of environmental mitigation measures or compliance obligations of any party except as part of the environmental mitigation costs of projects financed by this division...” Consequently, instead of the user who benefits from the project being responsible for reducing or avoiding the project’s significant adverse effects on the environment, PCL says the taxpayers, who will receive no benefit from the project, will foot the bill in order to protect the existing environment from the project’s significant harm. This funding strategy means there will be less public funds for restoration of the environment.

Caves refutes this claim, noting the language that PCL also references is a general provision that prevents public dollars from going to mitigation except for those portions of the project that have public benefit. Spivy-Weber agrees that the mitigation is not different than what the state currently provides by way of mitigation for projects.

**Q: Where is polling and the press on the bond?**

A: Caves says the most recent polling put support at about 50% – less than they would like at this time but similar to what Prop 84 was polling at in 2006. From the support campaign perspective, the biggest question is what the general state of California’s economy will look like in November, and how that will impact voters. Spivy-Weber agrees with the economy being the central issue and notes that polls show dams are not a deterrent to most people.

The press has not been very receptive to the proposed bond, and at least one media expert claims that there was a sophisticated campaign behind stories and columns. On November 15, 2009, the *San Francisco Chronicle* published a bond story whose headline read “Water bond offers nearly \$2 billion in ‘pork’.” The *Riverside-Press Enterprise* started its article of November 28, 2009 with “Sink the pork-laden water bond.” And in the *Sacramento Bee* editorial dated November 8, 2009, the paper decries “Unfortunately, the Senate and Assembly undermined that [policy] achievement by ramming through an \$11.1 billion bond proposal that is laden with wasteful spending.”

Unfortunately, in these cases cited above and others, that “wasteful spending” which is being attacked is often those funds of most importance to land trusts and statewide land and water conservation. Specific “pork” projects targeted by the media include \$20 million for habitat projects in Ventura County, \$75 million to the Sierra Nevada Conservancy, \$20 million for the Baldwin Hills Conservancy, \$20 million for the Bolsa Chica wetlands, and \$30 million

for State Parks. Joe Caves has also been personally attacked, referred to as a “renowned pork chef” by George Skelton in the *Los Angeles Times*.

## CONCLUSION

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The support campaign for the Safe, Clean, and Reliable Drinking Water Supply Act of 2010 is seeking CCLT’s endorsement, along with land trusts in general. PCL and Sierra Club are looking for allies in opposition to the measure, though they have not explicitly courted CCLT. Isenberg believes CCLT must ask itself if the Delta and water is better off with an imperfect plan or not? And, do we see an advantage or disadvantage in supporting the bond in terms of finding a seat at the table on the Delta.

Conservationists and environmentalists currently find themselves in unfamiliar terrain. Support and sympathy from the press and our public servants at the State Capitol have been key components to past conservation successes. This has been seen most recently in the support for State Parks even as they are consistently placed on the chopping block by the Schwarzenegger Administration. Yet, prior to the formation of an organized support campaign, some media are attacking the conservation components of the water bond as “pork” – a distasteful connotation that, if it sticks, could cause long-term damage to public support for conservation.

However, with a 12 percent unemployment rate and a \$20 billion budget shortfall, conservation priorities are potentially taking a backseat to other pressing questions of how to get more jobs on the ground and close the State Budget gap. This has already been seen with the passage of two CEQA exemption bills by the Legislature late last year.

PCL, Sierra Club and other environmental opponents believe increased visibility by the conservation community for this particular measure at this particular moment could hurt collective efforts for stronger conservation financing in the future.

Given California’s economic state and short-term forecast, this may also be the last opportunity to secure additional significant conservation dollars for years the remainder of the decade.



TO: CCLT Board of Directors  
FR: CCLT Policy Committee  
DT: April 28, 2010  
**RE: Addendum to Water Bond Analysis**

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In January, we provided the CCLT Board of Directors with an analysis of the \$11.4 billion water bond that will be placed on the November 2010 ballot. This was subsequently distributed to our members and supporters.

At the January 15<sup>th</sup> meeting, the Policy committee determined that, using the analysis as a guide and additional external information that became available over the coming months, it would prepare a recommendation to the Board as to what position, if any, CCLT should take on this proposition. The Board agreed with this timeline at its January 28<sup>th</sup> meeting.

Since that time, the Committee continued to consider emerging information and to discuss further the water bond at its all-day retreat on March 4<sup>th</sup> and at its April 23<sup>rd</sup> meeting.

This addendum highlights additional issues that have surfaced, comments received from members and stakeholders regarding the analysis, CCLT's role to date in highlighting the bond as a discussion item only, campaign updates, and the latest polling on the bond.

## **NEW ISSUES**

Since our January memo, the opposition has developed an additional argument against the water bond: privatization of water. They assert that "private corporations are empowered in the language of the bond measure to own and manage dams paid for with public bond funds. This opens the door to allowing private interests to sell water from the dams on the open market to the highest bidder." In addition, they argue that "a \$1 billion set-aside for ocean desalination projects allows such operations to be wholly owned by private corporations." The most clarification we could get from the opposition is that because, simply stated, the water bond will allow private interests to develop water facilities, they will own the water and be able to control the price of water.

While water is not CCLT's area of expertise, it seems that there is a big difference between owning a facility and owning the water, and that even if private interests could own the water, it doesn't mean that their use and pricing would be free of regulation and oversight. Actual

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privatization of water is happening in other parts of the world, and we sought to understand what impact, if any, the water bond would have in this area.

We contacted Phil Isenberg for his response, who pointed staff to a 1986 court decision that concluded that water rights are usufructuary – meaning there is a right by a private party to *use* water, but not to *own* that water. Further, Phil’s opinion is that no privatization of water is authorized in the bond bill.

Opponents argue that there is language that allows private water companies to apply for funding. However, as can be seen in the language below, funds for surface storage projects can be allocated to joint powers authorities which may include a variety of governmental and nongovernmental members. Because a nongovernmental entity may be a partner in a JPA, it does not mean that a private water company is applying for or receiving funds.

The actual language in questions reads as follows:

*79749. (a) The funds allocated for the design, acquisition, and construction of surface storage projects identified in the CALFED Bay-Delta Record of Decision, dated August 28, 2000, pursuant to this chapter may be provided for those purposes to local joint powers authorities formed by irrigation districts and other local water districts and local governments within the applicable hydrologic region to design, acquire, and construct those projects.*

*(b) The joint powers authorities described in subdivision (a) may include in their membership governmental and nongovernmental partners that are not located within their respective hydrologic regions in financing the surface storage projects, including, as appropriate, cost share participation or equity participation.*

With regard to the argument that “\$1 billion set-aside for ocean desalination projects allows such operations to be wholly owned by private corporations”, numerous types of projects are eligible for the \$1 billion as identified in the language below:

*79780. The sum of one billion dollars (\$1,000,000,000) shall be available, upon appropriation by the Legislature from the fund, for grants and loans for water recycling and advanced treatment technology projects, including all of the following:*

- (a) Water recycling projects.*
- (b) Contaminant and salt removal projects, including groundwater and seawater desalination.*
- (c) Dedicated distribution infrastructure for recycled water, including commercial and industrial end-user retrofit projects to allow use of recycled water.*
- (d) Pilot projects for new salt and contaminant removal technology.*
- (e) Groundwater recharge infrastructure related to recycled water.*
- (f) Technical assistance and grant writing assistance for disadvantaged communities.*

...

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*79784(2) The department shall award grants or loans under this chapter 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.*

The chapter dealing with water recycling is silent as to who may apply for funding. However, the entire water bond has the following control language:

*79714. Eligible applicants under this division are public agencies, nonprofit organizations, public utilities, and mutual water companies. To be eligible for funding under this division, a project proposed by a public utility that is regulated by the Public Utilities Commission or a mutual water company shall have a clear and definite public purpose and shall benefit the customers of the water system.*

### **MEDIA AND PRESS**

News articles have slowed significantly in the new year on this issue, and those that have been published have mostly reported the results of a poll conducted in February. However, editorial and opinion editorials have recently started surfacing in support of the bond, most notable within the Fresno Bee on April 11, which stated “California voters in November can take a major step toward solving the water crisis by approving an \$11.1 billion bond. It would be foolish to allow this opportunity to pass. Doing nothing will only worsen the battle over the state's limited water supply.”

Op-eds in support by the Nature Conservancy/Audubon California and California Alliance for Jobs have appeared in the *San Francisco Chronicle* and *Capitol Weekly*, respectively. The *Chronicle* also featured on February 23 in its Open Forum section a submission from the President of the United Farm Workers in opposition to the bond.

### **POLLING**

The most recent polling data available was released in early February by the opposition campaign, which hired Tulchin Research to conduct a telephone survey among 600 likely November 2010 voters across California.

The survey found that voters oppose the water bond: 55% of those surveyed indicating they will vote no, with 34% support the initiative and the remaining 11% undecided. Commentary released with the survey results notes that “when looking at a historical analysis of public polling conducted on previous statewide bond measures, we could not find an example of a statewide bond measure passing when a majority of voters initially opposed the measure”.

Polling data from the support campaign does not appear on its website.

## **FEEDBACK**

CCLT has broadly distributed the original analysis to members and other conservation stakeholders, and has highlighted the bond at the Annual Conference, and at meetings of the Bay Area Open Space Council and the Sierra-Cascade Land Trust Council.

The analysis has been well-received by virtually everyone. Both opponents and supporters, including those guests that spoke to the Policy Committee, have expressed appreciation over the document. At the Annual Conference, Dan Taylor of Audubon California spoke at the plenary session on the bond, and started his comments off stating he “could find no fault with the analysis.”

Ongoing conversations with members seem to indicate many members are likely to take no position; some will support but we have heard from no member who is planning to oppose. We have heard from a staff person of one land trust who encouraged CCLT and others to stay off the water bond although this view was not shared by the executive director of the same land trust. Conversations with staff with member land trusts do not anticipate any negative view by their organization toward CCLT if CCLT decides to support or be neutral on the bond.

## **SUPPORT AND OPPOSITION**

Both campaigns are now underway, and have dedicated websites featuring supporters and opponents. Supporters for the bond cover a wide spectrum of business, labor, agricultural, environmental, local government and water agency interests. Conservation/environmental support is The Nature Conservancy, Audubon California, Bolsa Chica Land Trust, American Farmland Trust, Ventura Hillside Conservancy, California Outdoor Heritage Alliance, Natural Heritage Institute and WiLDCOAST.

Opponents are almost entirely within the environmental protection realm and now include Planning and Conservation League, Sierra Club, Clean Water Action, Friends of the River, Sierra Nevada Alliance, Food and Water Watch, and others. Based on the opposition website, no labor or teachers associations have joined the opposition (although an open letter that appeared in the newspaper from the United Farm Workers say that it opposes the water bond but the organization is not listed on the opposition’s website).

In conclusion, since January, the opponents’ poll has potentially provided momentum to the opposition. It is expected that the support campaign will have more financial resources than the opposition – particularly if the predicted heavy-hitters to the opposition campaign of teachers and some unions continue to not materialize.

## CALIFORNIA COUNCIL OF LAND TRUSTS

It is expected that messaging from the support campaign will continue to focus on the dire need to fiscally support the Delta and the state's diminishing water resources. The thrust of the opposition campaign and messaging has already been covered. Even with the environmentalists in the lead on the opposition campaign, "pork" is being featured prominently on the website and materials. CCLT received an endorsement packet from the opposition campaign that features several false assertions and the polling results.

Lastly, there is no way to definitively answer the questions about the impact on the State Budget and bond freeze if the bond were approved. This issue continues to be a concern. The state is still facing a \$20 billion deficit, though California recently received higher-than-anticipated tax revenues for the third straight month. The State Treasurer cautioned the Legislature and the Administration against further indebtedness in December 2009.

However, the State Treasurer has also done very well on Wall Street in Spring 2010 which will result in \$700 million plus for the Natural Resources Agency and its departments to begin new projects. All previously frozen projects have funding to continue through year's end. The increased revenues to the state and the bond sales suggest that this will restart the flow of Prop 84 funding perhaps sooner than expected, which then raises the question of how long those dollars will last, and when the next opportunity to replenish them could arrive.