

Senate Bill 2:
**The Safe, Clean, and Reliable Drinking Water
Supply Act of 2012**

Copyright © 2012 by University of the Pacific,
McGeorge School of Law

By:

Claire Calvert

*J.D., University of the Pacific, McGeorge School of Law to be conferred May 2013
B.A., Political Science, George Washington University 2009*

and

Adam Yakira

*J.D., University of the Pacific, McGeorge School of Law to be conferred May 2012
B.A., Philosophy, University of California, San Diego 2008*

I. EXECUTIVE SUMMARY

A California Water Bond is on the November 6, 2012 ballot as a legislatively-referred bond act. This bond act is titled Senate Bill 2: The Safe, Clean, and Reliable Drinking Water Supply Act of 2012.¹

An initiative to sell bonds for the purpose of acquiring funds for various public works projects is called a bond measure. Such measures are used to fund things like research, protection of natural resources, transportation infrastructure improvements, and other such projects. Bond measures are popular when other revenue sources, such as taxes, are limited or non-existent, such as in states like California that have stringent laws on increase on state taxes.²

Article XVI of the California Constitution prohibits the California State Legislature from borrowing more than \$300,000 without approval from both houses of the Legislature with a two-thirds vote *and* approval from a majority of California voters. Such a measure may be submitted to California voters at either a direct primary or general election.³ Senate Bill 2 is one such bond measure.⁴

If voters approve Senate Bill 2, it will allow the state government to borrow \$11.1 billion to overhaul California's water system.⁵

The Safe, Clean, and Reliable Drinking Water Supply Act of 2012 is composed of 12 chapters that attempt to revamp California's water system. This bill is a component of a five part water package that was proposed in 2009.

On November 4, 2009, the motion to put the bond initiative on the November 2010 ballot was passed in the California State Senate and the California State Assembly. Dave Cogdill was the primary sponsor of the measure. While this initiative was supposed to appear in the November 2010 election. This initiative was pushed back to the November 6, 2012 election due to the economic conditions at the time.

The bond proposes to accomplish a wide variety of necessary changes to the California water system. State ballot pamphlets for the November 6, 2012 election will describe Senate Bill 2 as measure that will:

- Protect water quality and ensure safe, clean drinking water
- Meet the water supply needs of California residents, farms, businesses
- Expand water conservation and recycling
- Restore fish and wildlife habitat
- Reduce polluted runoff that contaminates rivers, streams, beaches, and bays
- Protect the safety of water supplies threatened by earthquakes and other natural disasters.⁶

1 S. B. 2, 2009 Gen. Assemb. Reg. Sess. (Cal. 2009).

2 John Semmens, *Treasury Secretary Says 'Stimulus' Working as Planned*, THE ARIZONA CONSERVATIVE, July 13, 2009, <http://azconservative.org/2009/07/13/treasury-secretary-says-stimulus-working-as-planned/>

3 CAL. CONST. art. XVI, § 1.

4 *Id.*

5 Cal. S. B. 2

6 Assemb. B. 1265, 2009 Gen. Assemb. Reg. Sess. (Cal. 2009).

Members of the California State Senate approved Senate Bill 2 by a 28 to 8 vote and members of the California State Assembly approved putting it on the ballot by a 55 to 20 vote.⁷ Therefore, the first step of enacting this bond, approval by a two-thirds vote by each house of the Legislature, was accomplished. Senate Bill 2 will now go to the California voters.

II. THE LAW

A. Background

On November 4, 2009, California's Legislature approved a five-part package to overhaul California's water system. The water package consists of five bills: The Delta Governance and Management (Senate Bill 1), The Water Bond Measure (Senate Bill 2), Groundwater Monitoring (Senate Bill 6), Water Conservation (Senate Bill 7) and Water Rights Enforcement (Senate Bill 8). All of the measures, besides Senate Bill 2, were passed in the 2009-2010 election.⁸ The package was centered on California's water distribution system, the Sacramento-San Joaquin Delta. The bond in this package is Senate Bill 2. To take effect, Senate Bill 2 requires over fifty percent of the votes in the November 2012 election.

Numerous factors have contributed to the Delta's declining ecosystem: water pollution from agricultural, industrial, and urban developments; the introduction of non-native species; the loss of native fish and wildlife; drought; and the competitive interests from recreational, environmental and metropolitan groups.⁹ The Delta's decline has led to historic restrictions in water supply deliveries. As a result, there is an urgent need to both improve the Delta environment and the water systems that help sustain California's economy.¹⁰

A study by the Environmental Defense Fund showed that the Delta provides water for almost fifty percent of the urban areas in California.¹¹ The Delta is by far the greatest supplier of water for urban areas throughout California. While the Bay Area accounts for approximately twenty-five percent of the demand on the Delta, Southern California trails behind the Northern California leader only slightly.¹² Senate Bill 2 targets the Sacramento-San Joaquin Delta region in an attempt to confront this great demand.

Figure 1 below depicts California water use in the Bay Area and Southern California. Twenty-five percent of the Bay Area's water use comes from Bay-Delta imports. Forty-five percent of Bay Area water comes from local imports. Nineteen percent of the water comes from In Basin Supplies. One percent of Bay Area water is from Recycled and Reused Supplies. Southern California gets twenty percent of its water from Bay-Delta Imports. 10% of Southern California water comes from Local Imports. 20% of its water comes from the Colorado River. About forty

7 John Howard, *Water bond's ripples wash in the Capitol*, CAPITOL WEEKLY (July 15, 2010 12:00 AM), http://www.capitolweekly.net/article.php_c=yzisloymp94tb&xid=yzifd6z4uehcb&done=.yzisloympy4tb.

8 Daniel Kelly, *California Legislature Passes New Delta and Water Policy Legislation*, SOMACH SIMMONS & DUNN (Nov. 6, 2009), <http://www.somachlaw.com/alerts.php?id=47>

9 *Where Rivers Meet-The Sacramento-San Joaquin Delta*, CALIFORNIA DEPARTMENT OF WATER RESOURCES (July 18, 2008), <http://www.water.ca.gov/swp/delta.cfm>

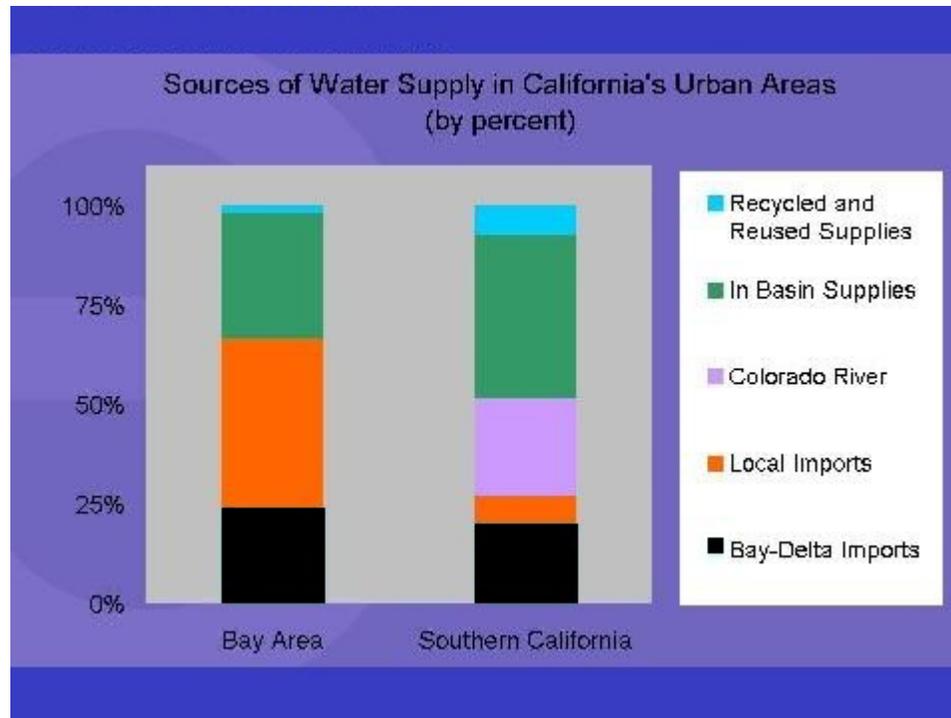
10 *Sacramento - San Joaquin Delta, Environmental Defense Fund*, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, <http://www.mwdh2o.com/mwdh2o/pages/yourwater/supply/delta/index.html> (last updated Feb. 23, 2012).

11 Spreck Rosekrans, *Where California's cities get their water*, ENVIRONMENTAL DEFENSE FUND, (Jan. 22, 2009) <http://blogs.edf.org/waterfront/2009/01/22/where-california%E2%80%99s-cities-get-their-water/>

12 *Id.*

percent of Southern California water comes from In Basin Supplies and 10% from Recycled and Reused Supplies.

Figure 1¹³



While the water bond was originally slated to appear on the November 2, 2010 ballot as Proposition 18, the California State Legislature on August 9, 2010 voted to postpone the vote on the measure from November 2, 2010 to the November 6, 2012 ballot. Tom Dresslar, State Treasurer Bill Lockyer's spokesman, said, "If we keep going down the road we're headed, debt service is going to devour more than 10 percent of general fund revenues in 2014-2015."¹⁴ The suffering economy was the main reason for the postponement of Senate Bill 2.

In January 2012, Governor Jerry Brown said he thought the measure should again be removed from the 2012 ballot and, instead, be placed on the 2014 ballot.¹⁵ However, Senate Bill 2 is still slated to appear in the November 2012 election.

13 Spreck Rosekrans, *Where California's cities get their water*, ENVIRONMENTAL DEFENSE FUND (Jan. 22, 2009) <http://blogs.edf.org/waterfront/2009/01/22/where-california%E2%80%99s-cities-get-their-water/>

14 Mike Taugher, *California asked to spend more during unprecedented spree of water spending*, SAN JOSE MERCURY NEWS, Nov. 23, 2009, http://www.mercurynews.com/ci_13852484?source=most_viewed&nclick_check=1.

15 Anthony York, *Jerry Brown says November water bond vote might need to be delayed*, LOS ANGELES TIMES, Jan. 9, 2012, <http://latimesblogs.latimes.com/california-politics/2012/01/jerry-brown-water-bond.html>.

B. Recent Water Bond Propositions

The last time California voters approved a water bond was with Proposition 84 in 2006. Proposition 84 funded water, flood control, natural resources, and park and conservation projects by authorizing over five billion dollars in general obligation bonds.¹⁶ The California General Election Official Voter Information Guide stated that the bond was to be used to fund various projects that were aimed at improving drinking and agricultural water quality and management; preserving, restoring and increasing public access to rivers and beaches; improving flood control, and planning for overall statewide water use, conveyance, and flood control.¹⁷ These bonds will be paid off from the state general fund over a period of 30 years for an estimated total cost of \$10.5 billion. Its supporters spent \$11.4 million on their campaign urging a "yes" vote.¹⁸

Four years earlier, with Proposition 50 in 2002, voters authorized \$3.4 billion in general obligation bonds to fund a variety of water related programs.¹⁹ The bonds were used to fund CALFED Bay-Delta projects including urban and agricultural water use efficiency projects; grants and loans to reduce Colorado River water use; purchasing, protecting, and restoring coastal wetlands; and grants for water management and quality improvement projects, improving security for state, local, and regional water systems, and desalination and drinking water disinfection.²⁰ These bonds are to be repaid with interest from the state's General Fund over a 25-year period, which is a total cost of about \$5.7 billion dollars.²¹

As of January 2010, California has a total bond debt of \$89 billion from previous bond issues approved by the state's voters. The state makes yearly debt payments of about \$1 billion on its \$89 billion debt load.²²

C. Pending Water Related State Legislation

Senate Bill 2 is not the only pending water related bill that seeks to address water quality issues in California. Three other bills are currently waiting reviewing by the legislature: Water Quality, Salinity, Agricultural Use (Assembly Bill 1058), Sacramento-San Joaquin Delta, Dredging (Assembly Bill 903), and Salton Sea Restoration (Assembly Bill 939).

Assembly Bill 1058 is described in its text to require the State Water Resources Control Board, on or before July 1, 2013, to adopt a statewide policy establishing a statewide water quality objective and plan of implementation for chloride and other measures of salinity that may affect the suitability of water used for agricultural purposes, in accordance with prescribed requirements.²³ Like Assembly Bill

16 *Water Quality, Safety and Supply, Flood Control, Natural Resource Protection, Park Improvements, Bond Initiative Statute*, CALIFORNIA GENERAL ELECTION OFFICIAL VOTER INFORMATION GUIDE, http://www.voterguide.sos.ca.gov/past/2006/general/props/prop84/argue_rebutt84.htm.

17 *Id.*

18 *Id.*

19 *Proposition 50 Funding for Public Water Systems*, CALIFORNIA DEPARTMENT OF PUBLIC HEALTH (Dec. 19, 2011) <http://www.cdph.ca.gov/services/funding/Pages/Prop50.aspx>

20 *Id.*

21 *Id.*

22 LEGISLATIVE ANALYST'S OFFICE, Proposition 18 (July 15, 2010) http://www.lao.ca.gov/ballot/2010/18_11_2010.aspx

23 *Bill Documents*, OFFICIAL CALIFORNIA LEGISLATIVE INFORMATION, http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_1058&sess=CUR&house=B&author=smyth

1058, Senate Bill 2 seeks to create clean water in the area of agriculture. This bill was introduced on February 18, 2011, and amended on March 31, 2011.²⁴

Assembly Bill 903 is described in its text as a commitment to study dredging in the Sacramento-San Joaquin Delta, and would require the State Water Resources Control Board to provide priority review for dredging permits in the Delta.²⁵ Like Senate Bill 2, the aim of this bill is to protect the Delta region's water. This bill was introduced on February 17, 2011, and amended twice: once on March 31, 2011, and once on April 12, 2011.²⁶

Assembly Bill 939 would repeal and add Article 2 (commencing with Section 2940) of Chapter 13 of Division 3 of the Fish and Game Code, relating to the Salton Sea.²⁷ The bill states that existing law establishes the Salton Sea Restoration Council as a state agency in the Natural Resources Agency to oversee the restoration of the Salton Sea.²⁸ This bill would eliminate the council, and assign duties relating to the restoration of the Salton Sea to the Salton Sea Authority, a joint powers authority.²⁹ The implementation of this bill, like Senate Bill 2, would increase the demand on California water departments.³⁰ This bill imposes duties on a local joint powers authority; the bill would impose a state-mandated local program. This bill was introduced on February 18, 2011, and amended on March 30, 2011, and June 21, 2011.³¹

III. THE EFFECTS OF SENATE BILL 2

The non-partisan Legislative Analyst's Office stated that the main purposes of Senate Bill 2 are:

- I. *Improving the Availability and Reliability of Water Deliveries.*** These types of projects could include surface storage (dams), groundwater storage, water recycling, water conservation, flood control improvements, and local or regional projects to transport water.³²
- II. *Improving the Quality of Water Deliveries.*** These projects would protect water sources—including lakes, rivers, streams, and groundwater—from pollution, through the cleanup of contaminated groundwater, wastewater treatment plant improvements, and upgrades to public water systems to meet safe drinking water standards.³³
- III. *Protecting and Restoring State Ecosystems Including the Delta.*** Projects could include those that protect native fish and wildlife dependent on the Delta ecosystem, restore coastal salmon habitat, and restore watershed lands or rivers and streams throughout the state that support threatened or endangered species.³⁴

A. Senate Bill 2: Uses of the Bond Funds

²⁴ *Id.*

²⁵ *Bill Documents*, OFFICIAL CALIFORNIA LEGISLATIVE INFORMATION, http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_903&sess=CUR&house=B&author=bill_berryhill

²⁶ *Id.*

²⁷ *Bill Documents*, OFFICIAL CALIFORNIA LEGISLATIVE INFORMATION, http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_939&sess=CUR&house=B&author=v._manuel_p%E9rez

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² LEGISLATIVE ANALYST OFFICE, *supra* note 23.

³³ *Id.*

³⁴ *Id.*

Senate Bill 2 is divided into four major parts: improvements and sustainability, conservation and protection, reliability and recycling, and groundwater and drought relief. These sections each have targeted budgets as well as specified projects to accomplish the goals within the budget constraints. The Legislative Analyst’s Office created Figure 2 below depicting the major areas of this bond act, the projects, and their predicted costs.³⁵ The numbers displayed below are figures in the millions.³⁶

Figure 2³⁷

State Water System Operation Improvement	
I. State, regional, and local surface storage projects, groundwater storage, modernizing reservoir operations, and conveyance to improve interregional system operations.	\$3,000
Sustainability of the Sacramento-San Joaquin Delta	
II. Projects to protect and enhance the sustainability of Delta ecosystem.	\$1,500
III. Protection and improvement to Delta-related levees, drinking water quality, infrastructure, and fish and wildlife habitat; and address other projects that support legislatively approved Delta sustainability options.	750
Subtotal	(\$2,250)
Conservation and Watershed Protection	
IV. Specified projects and programs for resources stewardship, ecosystem restoration, urban watershed, invasive species, and water rights acquisition.	\$1,205
V. Projects for dam removal, economic development, education, salmon passage, and ocean protection.	430
VI. Projects to protect watersheds, forest health, and water quality.	100
VII. Funding for infrastructure mitigation program.	50
Subtotal	(\$1,785)
Water Supply Reliability	
VIII. Competitive grants for a wide variety of water supply reliability projects, with funding allocated regionally.	\$1,400
Water Recycling	
IX. Grants and loans for water recycling projects, groundwater storage, desalination, and technical assistance.	\$1,000
X. Grants, loans, and direct expenditures for water conservation and water use efficiency projects.	250
Subtotal	(\$1,250)
Groundwater Protection and Quality	
XI. Grants, loans, and direct expenditures for water treatment, drinking water cleanup, and projects to prevent contamination of groundwater that serves as a source of drinking water.	\$1,000
Drought Relief	

35 *Id.*

36 *Id.*

37 *Id.*

XII. Grants, loans, and direct expenditures for local and regional drought relief projects.	\$455
---	-------

Total	\$11,140
--------------	-----------------

IV. DRAFTING ISSUES

Senate Bill 2 incorporates other laws into its text; therefore, there are potential drafting issues. California state law interprets incorporation of other laws based on how they are incorporated.³⁸ Specific incorporation refers to a statute that references and adopts portions of another statute.³⁹ Later modifications to those laws will not affect the new law.⁴⁰ On the other hand, general incorporation allows the bill that incorporated the law to evolve along with the law as it is changed.⁴¹

Senate Bill 2 incorporates a number of other laws through general incorporations including the General Obligation Bond Law, the Public Resource Code, the Health and Safety Code, the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 106-554, and the Water Code. General incorporations must be amended if the statutes referred to are changed.⁴² If any of these statutes are later amended, Senate Bill 2 must be modified to reflect the changes. In *San Bernardino Valley Water Conservation District v. Local Agency Formation Commission*, the court held that incorporation of other laws through the reference to the entire body of law constitutes general incorporation. Since Senate Bill 2 incorporates a number of other laws, it falls under general incorporation.

V. CONSTITUTIONAL ISSUES

A. Federal Constitution

There do not appear to be any conflicts between Senate Bill 2 the United States Constitution.

B. California Constitution and the Single Subject Rule

The single-subject rule is a rule in the California Constitution that stipulates that ballot initiatives and legislation may deal with only one main issue.⁴³ This section was adopted to avoid any hidden consequences that legislators or voters may miss when reading the proposed law.⁴⁴ This helps prevent politicians from sneaking unpopular legislation through by bundling it with legislation which is more likely to pass.⁴⁵ Courts have interpreted this constitutional standard broadly to mean the germaneness or reasonable relatedness of a provision to a common theme or purpose to the entire initiative.⁴⁶ There is no reason to believe that Senate Bill 2 will violate the single subject rule.

38 *San Bernardino Valley Water Conservation Dist. v. Local Agency Formation Comm'n*, 173 Cal.App.4th 190, 197 (2009).

39 *Id.*

40 *Id.*

41 *Id.*

42 *Id.*

43 CAL. CONST. art. II, § 8(d).

44 *Id.*

45 *Senate v. Jones*, 21 Cal.4th 1142, 1156-1157 (1999).

46 *Legislature v. Eu*, 54 Cal.3d 492, 512 (1991).

VI. POLICY CONSIDERATIONS

This measure would allow the California Water Commission to allocate funding for state water system operation improvements. However, the Legislature would decide how to allocate the remaining bond funds. Although the selling of bonds to private organizations will produce jobs in California, this gain must be measured against the \$11.1 billion debt. However, the measure also allows no more than 50 percent of the \$11.1 billion of bonds to be sold prior to July 1, 2015.⁴⁷

The bond has prohibitions as to how money can be spent. For example, the funds cannot be used for projects meant to facilitate the moving of water from the Sacramento River to the Central Valley Project or the State Water Project sites.⁴⁸ The restraints extend to the construction, design, operation, and maintenance of the Central Valley Project and State Water Project facilities.⁴⁹

A. General Obligation Bond Costs

The state's costs for any bond include principal and interest payments. This measure would allow the state to issue up to \$11.1 billion of general obligation bonds, which would likely be issued in multiple installments over the next ten years.⁵⁰ The state would have to pay back, over the next few decades, \$11.1 billion in water bond principal, and a similar amount of bond interest if all the bonds were sold.⁵¹ The state typically makes equal payments throughout the 30 years in paying off the debt.⁵² Since the bond is paid out in installments, the state's final payment would be made approximately 30 years after the last installment is distributed. For example, if the last water bonds resulting from this measure are issued in 2030, these bonds would be fully paid off around the year 2060.⁵³

Assuming that interest rates for these water bonds average 5.5 percent, which has been the average interest rate for past water legislation, the state's total bond costs under this measure—both bond principal and interest—would eventually peak at about \$765 million annually.⁵⁴ The payments on this bond will account for .5% of the General Fund spending. Since this bond allows no more than 50% of the \$11.1 billion in bonds before July 1, 2015, the estimated cost until then would remain under \$385 million per year. After 2015, the highest annual expenditure could reach \$765 million.⁵⁵

B. Cost-Sharing by Local Governments

The bond measure allows for a matching requirement that will likely come from local governments, including the local public water agencies. This matching requirement may be waived under certain circumstances.⁵⁶ The bond generally calls for 50% of the total cost of the

47 LEGISLATIVE ANALYST OFFICE, *supra* note 23.

48 *Id.*

49 *Id.*

50 *Id.*

51 *Id.*

52 *Id.*

53 *Id.*

54 *Id.*

55 *Id.*

56 *Id.*

project to be matched by non-state entities.⁵⁷ Since many local and county agencies would likely have spent their own money on water projects without these bond funds, the total additional cost of this bond act is unknown. Estimates by the Legislative Analyst's Office predict these costs could possibly reach a few billion dollars in a one-time payment.⁵⁸

C. Operational Costs for General Obligation Bond-Funded Projects

Additional costs to operate or maintain the projects may be incurred by the state and local governments that develop projects with the bond funds. For example, there would be ongoing costs to operate a new groundwater storage facility constructed with the bond funds. While the amount of these potential additional costs is unknown, the Legislative Analyst's Office has estimated that the cost could be in the hundreds of millions of dollars annually once the projects are completed and operational.⁵⁹ However, these costs could potentially be offset by fees paid by those using the facilities.⁶⁰

D. California Voter Phone Survey Results 2010

From January 20 to January 25, 2010, Tulchin Research conducted a telephone survey among 600 likely November 2010 voters across California. The margin of error is +/- 4.0 percentage points.⁶¹ Figure 3 below shows California voters' response when asked their vote on Senate Bill 2.⁶²

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Ben Tulchin & Julie Lein, *New Statewide Poll Finds Voters Oppose \$11 Billion Water Bond*, TULCHIN RESEARCH (Jan. 25, 2010), <http://www.kysq.org/docs/Water%20Bond%20Public%20Release%20Final.pdf>

⁶² The verbiage of the actual question posed in January 2010: “*Now I would like to ask you about a ballot measure on November’s ballot. The measure is titled, “Safe, clean, and reliable drinking water supply act of 2010” and reads as follows: To protect water quality and ensure safe, clean drinking water; meet the water supply needs of California residents, farms, businesses, expand water conservation and recycling; restore fish and wildlife habitat; reduce polluted runoff that contaminates rivers, streams, beaches, and bays; and protect the safety of water supplies threatened by earthquakes and other natural disasters; the State of California shall issue bonds totaling eleven billion one hundred forty million dollars (\$11,140,000) paid from existing state funds subject to independent, annual audits, and citizen oversight. The fiscal impact would cost the state about 22 billion dollars over 30 years to pay off the 11 billion dollars in principal and 11 billion in interest costs of the bonds with payments of 800 million dollars a year.*”

Figure 3⁶³

Would you vote “Yes” in favor of the measure or “No” against it if the election were held today?⁶⁴

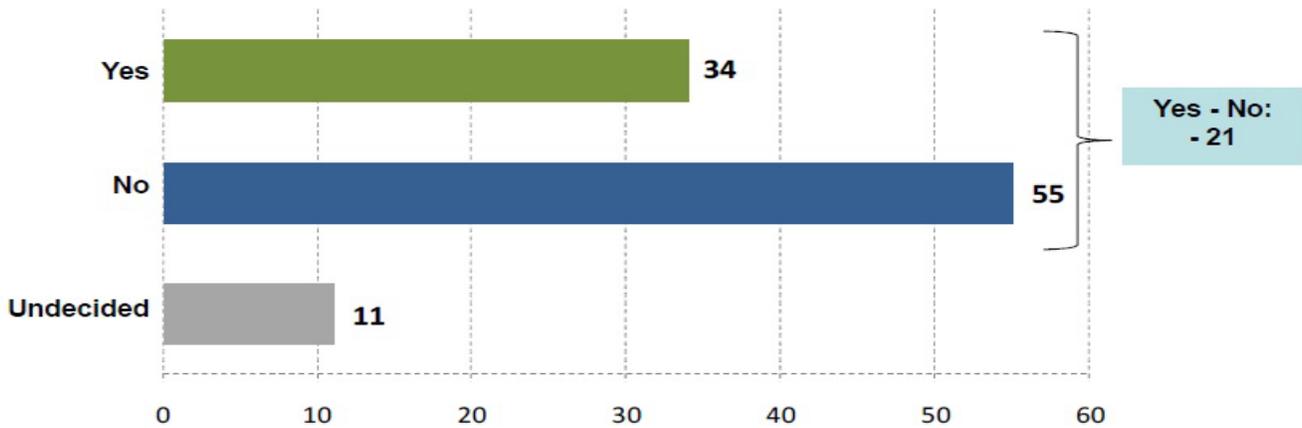


Figure 4⁶⁵

Opposition for the Water Bond Crosses Party and Geographical Lines			
	Yes	No	Yes – No
Democrats	43%	46%	-3
Republicans	20%	68%	-48
Decline-to-state/ other	38%	52%	-14
Northern California	35%	54%	-19
Southern California	33%	56%	-23

When polled in January, 2010 fifty-five percent of Californians stated that they currently oppose the bond while one in three voters (thirty-four percent) currently support the initiative.⁶⁶ The remaining eleven percent were undecided.⁶⁷

The survey results did not indicate a strong partisan bias. While Republicans were more likely to oppose the bill, a high number of individuals are still undecided.⁶⁸

VII. PUBLIC POLICY DEBATE

A. Support

A **YES** vote on this measure means: the state could sell about \$11.1 billion in general obligation bonds for various water and conservation-related programs throughout the state.

63 Tulchin, *supra* note 61.

64 *Id.*

65 *Id.*

66 *Id.*

67 *Id.*

68 *Id.*

Proponents of the bill argue that the Senate Bill will address seven problems California is facing: drought relief, reliability of the water supply, sustainability of the Delta, improvements state-wide to water operation, protection of and conservation of the watershed, protection of groundwater and water quality, water recycling, and water conservation.⁶⁹ For each of these sections there is a proposed budget and areas that proponents believe will be directly impacted by the passage of Senate Bill 2.

Drought relief has a \$455 million budget.⁷⁰ Proponents believe that this money will be used to fund conservation and recycling projects as well as the protection of dams and small projects for wastewater treatment. Water recycling is a reliable, economically feasible and environmentally sensitive means to make best use of California's scarce water resources help prevent droughts, and reduce the demand on freshwater systems like the Delta.⁷¹ Mimicking the way nature purifies water and treats wastewater, water recycling allows what was once wastewater to be safely used in a variety of ways, from acting as a barrier to saltwater intrusion to watering golf courses.⁷²

The California Department of Water Resources has reported that over 525,000 acre-feet of wastewater is recycled each year.⁷³ About half of that is used for agricultural irrigation and another 20% is used for landscape irrigation.⁷⁴ Roughly 12% is used for groundwater recharge.⁷⁵ In future years, experts predict California will recycle even more wastewater, setting a target of achieving close to 1 million acre-feet of recycled wastewater in coming decades.⁷⁶

The reliability of the water supply has been given a \$1.4 billion budget, focusing on the distribution of water throughout California and projects with the goal of increasing the water supply of California.⁷⁷

Delta sustainability has a budget of \$2.25 billion.⁷⁸ This money will be used for projects to restore the ecosystem surrounding the Delta region and restore vital resources in the Delta. Proponents argue that there is a need to protect the resident Delta smelt and the salmon migrating through the Delta region.⁷⁹ Many blame water exports as a leading cause of the Delta ecosystem's deterioration.⁸⁰ Proponents of Senate Bill 2 note the importance of Delta water to California's economy and believe Senate Bill 2 is necessary to improve Delta habitat conditions, which in turn can offset the impacts of exporting water.⁸¹

69 Michael Campos, *Webinar_CAWater_Nov2009: The California Water Deal of 2009*, STOEL RIVES, LLP (Nov. 19, 2009).

70 S.B. 2, 2009 Gen. Assem. Reg. Sess. (Cal. 2009).

71 *California's Water: Water Recycling Imitates Nature*, ASSOCIATION OF CALIFORNIA WATER AGENCIES, <http://www.acwa.com/content/water-recycling/californias-water-water-recycling-imitates-nature> (last visited DATE).

72 *Id.*

73 *Id.*

74 *Id.*

75 *Id.*

76 *Id.*

77 S. B. 2, 2009 Gen. Assemb. Reg. Sess. (Cal. 2009).

78 *Id.*

79 *Where Rivers Meet-The Sacramento-San Joaquin Delta*, DEPARTMENT OF WATER RESOURCES (July 18, 2008), <http://www.water.ca.gov/swp/delta.cfm>.

80 *Id.*

81 *Id.*

Statewide operational improvement has a \$3 billion budget focused on the increasing the reliability of the water supply, however, funding for specific dams is not guaranteed within this budget.⁸²

Conservation and watershed protection has a \$1.785 billion budget and focuses on restoration of ecosystems and watersheds.⁸³ This is accomplished through preventing damage from erosion, floodwater and sediment, furthering the conservation development, utilization, and disposal of water, and furthering the conservation and proper utilization of land.⁸⁴

Groundwater protection and water quality has a \$1 billion budget.⁸⁵ The ultimate goal of this section of Senate Bill 2 is to reduce contaminated groundwater that provides drinking water for Californians. In an average year, between 25 and 40 percent of California's water supply comes from groundwater.⁸⁶ That figure fluctuates and can be as high as 60% in exceptionally dry years.⁸⁷ California uses more groundwater than any other state, nearly twice as much as Texas, the second-ranked state.⁸⁸

Water recycling and conservation has a \$1.25 billion budget.⁸⁹ These funds are to be used for recycling and water treatment projects.⁹⁰

Supporters:

- Meg Whitman, candidate for the Governor of California in 2010 supports the proposal. (Steve Poisner opposes it, refusing to issue any more debt until the state can balance its budget. Jerry Brown has not expressed an opinion.)
- Silicon Valley Leadership Group
- Bay Area Council
- California Chamber of Commerce
- California State Council of Laborers
- Change to Win⁹¹

B. Opposition

A **NO** vote on this measure means that the state could not sell \$11.1 billion in general obligation bonds for these purposes.⁹²

82 S. B. 2, 2009 Gen. Assemb. Reg. Sess. (Cal. 2009).

83 *Id.*

84 *Id.*

85 *Id.*

86 *California's Contaminated Groundwater*, NATURAL RESOURCES DEFENSE COUNCIL, <http://www.nrdc.org/water/pollution/ccg/execsum.asp> (last visited DATE).

87 *Id.*

88 *Id.*

89 S. B. 2, 2009 Gen. Assemb. Reg. Sess. (Cal. 2009).

90 Michael Campos, *Webinar_CAWater_Nov2009: The California Water Deal of 2009*, STOEL RIVES, LLP (Nov. 19, 2009).

91 *California Water Bond (2012)*, BALLOTPEdia (March 8, 2012), http://ballotpedia.org/wiki/index.php/California_Water_Bond_%282012%29#Support.

92 S. B. 2, 2009 Gen. Assemb. Reg. Sess. (Cal. 2009). (Or short cite since you cited less than 5 footnotes ago)

The bond has been opposed by some environmental groups and lawmakers who argue that it is too costly for taxpayers and loaded down with pork-barrel projects.⁹³ They called for shelving the bond and opposed putting the same measure on the ballot in two years.⁹⁴ Many believe the spending is not directly related to improving water quality, there is a lack of measurable outcomes and the bill is prohibitively expensive.⁹⁵

The \$11 billion water bond bill includes about \$2 billion in earmarks for projects. Lawmakers have “candidly acknowledge were included in the proposal to win the votes that were needed to pass the plan out of the Legislature.”⁹⁶

Opposition points to examples of projects that would be funded if the proposition passes that are unrelated to the restoration of the Sacramento-San Joaquin Delta region or improvements to California water supply. Opponents argue that these projects have just been included to facilitate the two-thirds vote necessary for the Senate Bill 2 to pass both houses of the Legislature and be submitted to the voters.⁹⁷ These examples include:

- \$40 million to educate the public about California's water.
- \$100 million for a Lake Tahoe Environmental Improvement Program for watershed restoration, bike trails and public access and recreation projects.
- \$75 million for the Sierra Nevada Conservancy, public access, education and interpretive projects.
- \$20 million for the Baldwin Hills Conservancy to be used to buy more land. The conservancy is near the home of Assembly Speaker Karen Bass.
- \$20 million for the Bolsa Chica Wetlands in Huntington Beach for projects for visitors.⁹⁸

Other environmentalists objected that the measure favors building new surface reservoirs and does not provide enough emphasis on water recycling and conservation.

Wesley Chesbro, a Democratic member of the California General Assembly, says, "Funding removal of the Klamath dams while at the same time threatening the flows in the Trinity River is a fool's bargain. We need to find a way to fund dam removal that doesn't put the Trinity and our other North Coast rivers at risk."⁹⁹

Opponents:

- Sierra Club California
- Food & Water Watch

93 Wyatt Buchanan, *Water bond offers nearly \$2 billion in 'pork'*, SAN FRANCISCO CHRONICLE (Nov. 15, 2009) <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2009/11/15/MN4E1AJVMS.DTL>

94 *Id.*

95 *Id.*

96 *Id.*

97 *Id.*

98 S. B. 2, 2009 Gen. Assemb. Reg. Sess. (Cal. 2009).

99 Elizabeth Larson, *North Coast legislators weigh in on state water package*, LAKE COUNTY NEWS (Nov. 27, 2009), <http://lakeconews.com/content/view/11498/>; Patrick McGreevy, *California water bond pushed back to 2012*, LOS ANGELES TIMES (Aug. 10, 2010). <http://articles.latimes.com/2010/aug/10/local/la-me-water-bond-20100810>; *Opponents: poll shows water bond in trouble*, RECORDNET (Feb. 20, 2010), http://www.recordnet.com/apps/pbcs.dll/article?AID=/20100220/A_NEWS/2200316/-1/a_news14

- Clean Water Action
- Planning and Conservation League
- Environmental Justice Coalition for Water
- California Water Impact Network
- Salmon Water Now
- Small Boat Commercial Salmon Fishermens' Association
- Restore the Delta
- Full list of endorsers of the No on the Water Bond campaign
- United Farmworkers
- Republican Assemblyman Bill Berryhill
- Democratic Senator Lois Wolk
- Republican assemblyman Charles DeVore
- Democratic assemblywoman Noreen Evans¹⁰⁰

VIII. CONCLUSION

Senate Bill 2 is an \$11.1 billion bond meant to overhaul the state's water system as part of the comprehensive 2009 water package. Opponents of the bill argue that the bill is cost prohibitive and the same outcome could be achieved with significantly less money. Proponents argue that the bill is a necessary state action to support California's growing population and water needs. The voters in November will have to decide whether to support an \$11.1 billion project to revamp the Delta region and face the increased obligation on California's General Fund.

¹⁰⁰ *California Water Bond (2012)*, BALLOTPEDIA (March 8, 2012), http://ballotpedia.org/wiki/index.php/California_Water_Bond_%282012%29#Opponents.