



October 15, 2021

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional initiative related to water supply (A.G. File 21-0014, Amendment #1).

Background

Californians Get Water From Several Sources. Most of the water used for drinking and farming in California comes from rain and melted snow. Rain and snow flow into streams and rivers, many of which start in the mountains. California has built dams, reservoirs, and canals to store water and deliver it around the state. Water is also pumped from underground (referred to as “groundwater”), especially during dry years when not as much rain and snow falls. A small share of the state’s water comes from other sources, such as cleaning and reusing the wastewater that households and businesses send into sewers (referred to as “water recycling”).

Californians Use Water for Various Purposes. In an average year, Californians use about 39 million acre-feet of water for human uses. (An acre-foot is enough to cover a football field with water one-foot deep, and is about as much water as one to two households use in a year.) About 31 million acre-feet of water is used annually in the agricultural sector, to grow crops and sustain livestock. On average, Californians use about 8 million acre-feet of water per year for urban water uses. These include uses in residential (such as for drinking, bathing, and watering yards), commercial (such as for hotels or other businesses), and industrial settings (such as in factories), as well as for large landscapes like parks and golf courses.

Some Regions of the State Experience Water Shortages, Particularly During Dry Years. In certain years, particularly when the state receives less rain and snow, water scarcity can lead to limitations on use. For example, when California experienced a serious drought in 2012 through 2016, the state required cities to decrease their water use by 25 percent, and many farmers experienced significant reductions in the amount of water they could take from rivers and streams to water their crops. Scientists suggest that California will experience more frequent and intense droughts due to climate change, which increases the likelihood of such shortages and limitations occurring in the future. Additionally, significant rates of groundwater pumping in recent years have led to some groundwater shortages, as well to the ground sinking in some areas, causing damages to

canals and infrastructure. In response to these negative impacts, recent state laws required groundwater users to develop plans for how to use these resources more sustainably. Implementing these plans likely will result in limits on the amount of groundwater that farmers can use in the coming years. Reduced groundwater pumping will make it challenging to continue agricultural practices and production at current levels, particularly in dry years. Moreover, estimates suggest that roughly 1 million Californians, particularly in small rural communities, currently lack access to safe drinking water due to contamination and wells that have gone dry. Thousands of households had their wells fail during recent dry years.

Most Spending on Water Is by Local Governments. Local government agencies—usually water districts, cities, and counties—fund most of the projects that provide clean water for people to drink and supply water for farming. These include projects to increase water supplies, such as building water recycling plants. In recent years, local agencies spent about \$18 billion annually on water supply activities (including construction as well as ongoing maintenance and operation). Residents and farmers pay for the majority of this spending when they pay their water bills. The state sometimes gives grants and loans to local government agencies to help pay part of the costs of some of their water projects. In recent years, the state has spent about \$1.3 billion per year to support water supply projects, primarily from voter-approved general obligation bonds paid for by the state’s General Fund.

Most Water Projects Must Meet State Environmental Review Requirements. The California Environmental Quality Act (CEQA) requires reviews for certain projects, including water projects, to assess whether the projects will have negative impacts on the environment. The review may find that a project could be modified to lessen its environmental impacts before it proceeds to construction. Additionally, the California Coastal Act requires that new development projects along the coast, including water projects, receive a coastal development permit from the California Coastal Commission before they can be constructed. Before it grants such a permit, the commission must determine that the project does not have significant negative impacts on the coast—including to the environment, scenery, and public access. In some cases, CEQA and coastal development permit reviews are relatively straightforward, while in other cases they can be long, costly, and involve legal challenges.

Proposal

This measure seeks to increase water supply in the state through the implementation of new water projects. Specifically, the measure (1) amends state law to dedicate existing state General Fund revenues for developing additional water supply, (2) authorizes the sale of bonds to fund water supply projects, and (3) makes some changes to existing environmental review requirements for water supply projects.

Dedicates Share of State Revenues Towards Developing New Water Supply. The measure modifies the State Constitution to require that a portion of the revenues that the state receives every year be dedicated for undertaking water projects. Specifically, the measure requires that 2 percent of annual General Fund revenues be set aside in a special fund to develop new water supplies. (The General Fund is the state’s main operating account, which pays for education, prisons, health care, and other public services.) This set-aside would continue until the state has a new reliable supply of 5 million additional acre-feet of water per year (about a 13 percent increase compared to current average annual water use). The measure tasks the California Water Commission (CWC) with

establishing and overseeing a new program to allocate the funds for specific projects. The CWC would select which projects would be funded, allocate funding to grantees, and determine when the 5 million acre-feet objective has been achieved. Increases to the statewide water supply from projects funded by sources other than the new General Fund set-aside—such as through local funds—would also count towards achieving the 5 million acre-feet objective if they receive certification from CWC.

Allows Funds to Be Used for Various Types of Water Supply Projects. Projects eligible for this funding would include the development or expansion of facilities for:

- Groundwater cleanup and storage.
- Stormwater capture, treatment, and storage.
- Water recycling.
- Surface reservoirs.
- Desalination of seawater or brackish water.
- Water conveyance, such as canals or pipes.

Additionally, a portion of the funding—to achieve up to 1 million acre-feet of the total objective of 5 million acre-feet of water—could be used for activities that reduce the amount of water used (known as “water conservation”). Such activities might include providing rebates for replacing residential lawns with drought-tolerant plants or for purchasing more water-efficient home appliances or farm irrigation systems. Up to 2 percent of the annual funds could also be used to research and develop new technologies designed to increase the clean, safe, and affordable supply of water across the state.

The measure directs CWC to prioritize funding for (1) the completion of water storage projects for which CWC has already awarded some funding from a 2014 state water bond measure; (2) projects being proposed by a public agency, special district joint powers authority, or public-private partnership; (3) projects that could be completed within five years of being funded; (4) projects that could be completed “within a reasonable period of time;” and (5) other projects CWC determines will help achieve the 5 million acre-feet objective.

Authorizes State to Sell Bonds to Fund Water Supply Projects. The measure authorizes CWC to sell bonds to generate additional “up-front” funding to pay for new water supply projects. It would allow up to half of the annual funding set aside from the General Fund to be used to pay off the principal and interest for any such bonds that CWC decides to sell. Bonds are a way that governments borrow money but are more expensive in the long run because they require repayment with interest.

Modifies Some Environmental Permitting Requirements. The measure modifies the typical environmental review process for projects that increase water supply. Specifically, the measure would allow projects that CWC certifies will help achieve the objective of 5 million acre-feet of new water supply—including both those funded by this measure and those funded by other sources—to utilize modified and streamlined CEQA and coastal development permit processes. These changes include shortening the time line for litigation following completion of a CEQA review, imposing a 90-day time line for the Coastal Commission to review and decide upon permit applications, prohibiting the Coastal Commission from requesting any new or revised environmental reviews to

inform its decisions, and authorizing the Secretary of the California Natural Resources Agency to overrule the Coastal Commission's coastal development permit decisions. These changes likely would expedite the time lines for the reviews and overall project completion, but also could reduce the level of review of potential impacts for coastal projects. The measure allows some of the General Fund revenues it sets aside to be used to address any legal disputes that arise over projects' environmental reviews.

Fiscal Effects

Significant Costs to Build New Water Supply Projects. We estimate the cost of implementing new projects to develop 5 million acre-feet of new, reliable, statewide annual water supply will be several tens of billions of dollars, potentially totaling more than \$100 billion. The exact cost would depend on several factors. In particular, the costs would depend on the specific mix of water supply and conservation projects selected, which can vary considerably. In addition, the total cost to achieve 5 million additional acre-feet of supply would be higher to the extent that bonds are used to finance projects, as authorized by the measure, due to interest costs.

While most of the total costs to achieve 5 million additional acre-feet of water supply likely would be paid by the state—through the amounts from the General Fund set aside for this purpose—a portion could be funded by other sources such as local governments or public-private partnerships that decide to undertake such projects without fully relying on state funding. The exact proportion of costs that would be incurred by the state as compared to local sources is unclear and will depend on the factors described below.

Increased State Spending on Water Supply Projects. We estimate the measure would dedicate between \$2.5 billion and \$4 billion per year for water supply projects from existing state revenues for the next few decades. This level of spending would be a very significant increase from current General Fund expenditures for water supply. The amount of annual state funding dedicated to projects would depend on General Fund revenues each year. The duration of time for which funding is set aside would depend on (1) the total costs to implement projects selected for funding, including bond debt service payments; (2) how much of these costs are funded by the state versus local governments or other funders; and (3) how long projects take to complete. To the degree the proposed changes to environmental permitting review shorten the time line for completing projects, this likely would reduce the costs associated with those individual projects.

Less Funding Available for Other State Activities. Creating a new annual spending requirement of \$2.5 billion to \$4 billion for water supply means that these state funds would therefore not be available for other activities that could be funded from the General Fund. In years when the state has a large General Fund surplus—specifically, when General Fund revenues are more than 2 percent higher than existing budget commitments—this measure would reduce the state's ability to expand other programs. However, in years when the state does not have a large surplus, this measure could require the state to make reductions to existing programs unless it takes other actions, such as raising additional revenues. The measure would not affect the minimum annual funding requirement for schools and community colleges.

State Appropriations Limit Consideration. The State Constitution limits how much tax revenues the state can spend each year. However, certain types of spending, most notably for infrastructure, are excluded from this limit. In recent years, the limit has been an important consideration in state

budgeting decisions. Because most of the funding from this measure would support water supply infrastructure projects, this measure likely would increase the amount the state spends on excluded purposes by as much as \$2.5 billion to \$4 billion per year. As a result, it would tend to increase the amount of revenue the state spends on purposes excluded from the limit. Spending more on purposes excluded from the limit would reduce the chances the state spends revenues in excess of the limit. Revenues in excess of the limit, over a two-year period, triggers a requirement for taxpayer rebates and additional school payments.

Likely Decrease in Local Government Costs for Water Projects. Providing a significant increase in state funds for local projects could affect how much of their own funds local governments spend on these projects. In some cases, state funds would reduce local spending and result in savings. For example, this would occur in cases where state funds replace monies that local governments would have spent on projects even if state funds had not been available. In other cases, local governments could decide to take advantage of state funds to construct new water supply projects they would not have otherwise undertaken. In such cases, they could incur some additional costs by funding a portion of the construction costs, as well as to conduct ongoing operations and maintenance of the new facilities. While the net impact of this measure on local governments is unknown, overall it likely will result in some amount of savings from state funds replacing local funds. To the extent this occurs, it could result in water customers paying lower water bills than they otherwise would in the absence of the measure.

Summary of Fiscal Effects. We estimate that this measure could have the following major fiscal effects on the state and local governments:

- Total costs of several tens of billions of dollars for water projects, potentially totaling more than \$100 billion, to develop 5 million acre-feet of additional annual water supply.
- Dedicate between \$2.5 billion and \$4 billion per year of existing state General Fund revenues for the next few decades to support the above costs. These funds would therefore not be available to support other public services funded by the state.
- Unknown fiscal impacts on local governments, but likely some net savings from state funds replacing monies that local governments otherwise would have spent on water supply projects.

Sincerely,

for Gabriel Petek
Legislative Analyst

for Keely Martin Bosler
Director of Finance