



California Sportfishing Protection Alliance Statement of Opposition

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

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The California Sportfishing Protection Alliance (CSPA) has carefully reviewed the provisions of Assembly Bill 1471, *Water Quality, Supply and Infrastructure Improvement Act of 2014*, presently on the 4 November 2014 ballot as Proposition 1, Water Bond, and concludes that it represents a grave and insidious threat to core environmental values and principles buttressing protection for fisheries and the environment.

Proposition 1 undermines the public trust doctrine and the crucial principles that beneficiaries of projects should pay for them and that projects should be responsible for mitigating their adverse impacts. Furthermore, it: paves the way for a new era of big dam building; is a pork-filled barrel of subsidies to special interests, including BDCP; provides little near-term drought relief; eliminates public oversight; crowds out other critically needed investments; and is fiscally irresponsible. Not the least among the fourteen reasons to vote against Proposition 1 that are discussed below is that it sabotages, delays and diverts funding from meaningful efforts to address California's continuing water crisis.

CSPA joins the Pacific Coast Federation of Fishermen's Associations, San Francisco Crab Boat Association, Restore the Delta, Center for Biological Diversity, California Water Impact Network, Food & Water Watch, Southern California Watershed Alliance, South Delta Water Agency, Central Delta Water Agency, Concerned Citizens Coalition of Stockton, Winnemem Wintu Tribe, Small Boat Commercial Salmon Fisherman's Association and numerous other fishing, environmental, water, civic and tribal organizations in opposing this poorly conceived, environmentally damaging and fiscally abusive Bond, because Proposition 1:

1. *Undermines the public trust doctrine.*

Water in rivers and streams, like the air people breathe, belongs to the people of California as part of the public trust. Public trust doctrine, rooted in Roman Law and passed to America via English Common Law and Spanish Civil Law, is the heart and soul of environmental and fisheries protection in the state. Private interests have a right to use the public's water for beneficial purposes, as long as the public's ownership in healthy rivers is protected. The Bond requires taxpayers to enrich a few wealthy water users by purchasing water the public already owns, at inflated prices, to protect the public's rivers and environment. It's a retread of previously discredited programs that allowed speculators to reap millions in profit selling the public's water back to the public.

2. *Undermines the principle of beneficiary pays.*

The major reason more dams and other environmentally damaging projects have not been constructed in recent decades is the principle, stemming from approval of the State Water Project in 1960, that beneficiaries of water projects, not taxpayers, must pay for new projects.

The Bond turns the beneficiary pays principle on its head by requiring taxpayers to pay for projects benefiting special interests. For example, the feasibility study for Temperance Flat Dam on the San Joaquin River allocates 73% of costs to taxpayers, and the draft feasibility report for raising Shasta Dam on the Sacramento River claims that 60% of costs should be apportioned to the public. Dams are not constructed on behalf of rivers and fisheries. Taxpayers should not be required to underwrite the cost of new dams if the private water users who will profit from their construction will not fund them on their own.

3. *Undermines the principle that projects should mitigate adverse impacts.*

Projects have long been legally responsible for mitigating their adverse impacts. Many, if not most, of the watershed protection and restoration projects that will be funded by the Bond are efforts to repair and mitigate environmental damage caused by projects that were constructed by and for special interests. Contrary to claims in the Bond, the millions allocated for habitat restoration, water quality and fish protection facilities in the Delta is simply mitigation for BDCP and/or the existing export projects by another name. Taxpayers should not be on the hook because regulators failed to require special interest projects to mitigate their adverse impacts.

4. *Ushers in a new era of big dams.*

The Bond includes the largest appropriation for new dams in the state's history. The day after the legislature approved the Bond, the Nevada Irrigation District voted to move ahead with a new dam on the Bear River, a river with multiple existing dams. A number of dam projects that had been abandoned because of low water yield and financial infeasibility are being resurrected in response to the Bond's commitment of billions of taxpayer dollars for dams. If the Bond passes, fishermen and environmentalists can expect to find themselves spending decades fighting new dam schemes on rivers throughout the state.

5. *Is a backdoor subsidy for BDCP's tunnels.*

The Bond is not "BDCP neutral." Proponents of BDCP have made clear that the tunnels don't pencil out if BDCP cannot tap into additional water supplies to supplement existing water exports from the Delta. The Bond will lavishly fund water purchased from upstream storage or Sacramento Valley groundwater substitution schemes. However, once that water reaches the Delta, it becomes Article 21 or "abandoned" water, whenever existing inadequate Delta standards are met, and available for BDCP to export. The Bond also provides substantial funds to relieve Central Valley Project contractors from their existing responsibility to provide water to the wildlife refuges, thereby freeing up water for BDCP proponents to use.

6. *Incorporates environmentally damaging hidden promises.*

Beyond the obvious pork distributed to secure support for the Bond, numerous environmentally damaging sidebar promises have been made. For example, as the Merced Sun-Star reported on 13 August 2014, the Governor promised northern San Joaquin Valley legislators that he would use his influence to keep the State Water Board from implementing the flow increases on the San Joaquin River the Board has identified as necessary to protect public trust resources. Their vote

was conditioned on that promise. We have also learned that supporters of specific dam projects have been assured that their projects would receive prioritized funding.

7. *Provides little cost-effective near-term drought relief.*

Funds for recycling, conservation and groundwater cleanup were slashed 36% in the final version of the Bond in order to provide money for expensive water purchases and speculative new dams that will not be operational for decades. As the Sacramento Bee pointed out in a 1 June 2014 comprehensive article on dams, raising Shasta Dam and constructing Sites and Temperance Flat Reservoirs would cost \$7.5 billion and create only 315,900 acre feet of “new” water in an average year because “most of the available natural runoff in California already has been claimed.” Equivalent expenditures in conservation, recycling and reclamation would produce far more “new” water in less time while creating 2-3 times as many jobs. In essence, the Bond sacrifices funds for proven near-term projects that would create “new” lower cost water, contribute to regional self-sufficiency, reduce dependency on the Delta and provide drought relief in order to subsidize long-term pie in the sky projects benefiting the hydraulic brotherhood.

8. *Eliminates public oversight.*

The continuous appropriation language in the Bond ensures that questionable projects like new dams will be funded on an on-going basis, subject only to approval by politically appointed committees or agencies. The initial amounts stated in the Bond are only the down payment. Like high-speed rail, dams and other projects will ride the gravy train without any legislative oversight or meaningful public accountability.

9. *Sabotages efforts to meaningfully resolve California’s continuing water crisis.*

Prop. 1 is a red herring that diverts attention from the real causes of the state’s water crisis and the steps and resources required to address it. The water crisis is the result of the over-appropriation, waste and inequitable distribution of limited water supplies and the failure to balance the public trust. Rights to water exceed actual water five-fold. The first essential step in addressing the water crisis is a formal proceeding to bring rights to water into balance with available water. Colorado accomplished this in the 1970s. Idaho recently completed an adjudication of 150,000 water rights that covered most of the state. A parallel necessary step is a comprehensive socioeconomic benefit/cost analysis of water use to determine how limited water supplies can most effectively be used to meet multiple beneficial uses. Finally, a public trust proceeding must be conducted to determine how the common property rights of the people to healthy rivers and fisheries can best be balanced against consumptive needs. As a remedy for the state’s water crisis, the Bond is simply an enormously expensive and environmentally damaging placebo.

10. *Crowds out other critical investments.*

The Bond imposes an insidious hidden cost by crowding out critical investments in public schools, roads, public health and safety. California cannot afford to provide lavish subsidies to special interests, while ignoring existing and urgent infrastructure needs. The water Bond scuttled a long needed education Bond this year: 73% of the state’s schools are more than 25

years old and are beginning to fall apart. The 2013 report card for California by the American Society of Civil Engineers points out that 12% of California's bridges are structurally deficient, 16% are functionally obsolete and driving on damaged roads annually costs each of the state's motorists \$586 per year. California has 807 high-hazard dams, and only 45% of state-regulated dams have an emergency action plan.

11. *Is fiscally irresponsible.*

California is staggering under a \$777 billion debt and voters have already approved \$128 billion in general fund Bonds that must be repaid by taxpayers. The Bond would add over \$7 billion in taxpayer indebtedness that must be repaid with interest, which can easily double the original amount. Subsidies for special interests are inherently fiscally irresponsible.

12. *Is a hogfest of projects unrelated to water supply or drought relief.*

Bond proponents carefully disguised pork projects by not identifying specific projects in general funding allocations to various groups. Associated Press, in a widely published article, reported that Conservancies and other groups have acknowledged they will use Bond funds for pedestrian and bike trails, parkways, interpretive centers, trash cleanups and other projects with no direct connection to the stated intent of the water Bond. Some of these projects are located in desert lands far removed from water.

13. *Shamefully holds a few worthy projects hostage to fiscally irresponsible and environmentally damaging projects.*

The fact that the Bond contains a few worthy projects fails to justify sacrificing core environmental principles and fiscal responsibility. Approximately, 6.9% of the Bond will provide safe drinking water and clean water programs to disadvantaged communities. This commitment is long overdue and should have been presented as a standalone proposition. It's shameful to use the long-ignored plight of those lacking safe drinking water in disadvantaged communities as justification for eviscerating environmental protection and providing extravagant subsidies to special interests.

14. *Contains worthless, misleading assurances and restrictive language.*

Bond proponents claim that Prop. 1 includes restrictive language preventing the use of funds to further BDCP and assurances that protect the public and Delta. These claims are either *post hoc* rationalization or based in wishful thinking.

Claims that purchased water must be above and beyond present environmental rules or obligations are not reassuring considering that present water quality and flow standards are grossly inadequate and have contributed to the collapse of fisheries. As previously noted, using limited taxpayer funds to purchase water because agencies have failed to require mitigation or balance the "public trust" will, in the long run, ultimately deprive rivers and fisheries of critically needed water. If our rivers and fisheries have to purchase water to exist, they're gone.

Claims that storage project funds must be for public benefit, can be used for groundwater storage projects and go through a competitive ranking process, ignore the fact that dams and surface storage will inevitably outrank groundwater storage in the rigged ranking process. By definition, surface storage projects will meet more of specified public benefits in the Bond (i.e., storage, flood control, fisheries, water quality, emergency response and recreational) than groundwater storage. Dam proponents always seek to have alleged “public benefits” responsible for more of the cost of new dams than those who actually get the water.

Claims that the Bond is BDCP neutral and that funds cannot be used to build BDCP’s tunnels or subsidize mitigation ignore the fact that, while funds can’t be used to directly construct the tunnels, they will increase the water yield and lower the unit water cost of BDCP. While purchased water may provide some instream flow benefit, that water provides little ecosystem benefit once it reaches the Delta. The purchased “environmental water” becomes Article 21 or “abandoned” water when the Delta is meeting minimal standards, and thus transforms into subsidized water available for export to corporate farms in the San Joaquin Valley. Purchased water for the wildlife refuges simply relieves the Central Valley Project of existing responsibilities and frees up water for water contractors. BDCP proponents have demanded, in redline responses to the Governor discovered through public record act requests, that a publically funded program be established to buy water. BDCP does not pencil out without huge public subsidies for water purchases.

Finally, environmental apologists of the Bond claim that they’ll closely track the development of ranking criteria and dispersal of funds to ensure that the public is protected. Prop. 1 suspends the California Government Code’s rules for regulations and rulemaking for state departments and agencies regarding the development or implementation of programs or projects authorized or funded under the Bond. This includes the submission of rules to the Office of Administrative Law to determine whether proposed rules are consistent with state law. The development and adoption of solicitation and evaluation guidelines, ranking procedures, monitoring and reporting requirements, and public participation requirements are only vaguely described in Prop. 1. It is highly unlikely that environmental organizations have the enormous resources necessary to track the myriad proceedings and funding requests through the convoluted bureaucratic maze, or the wherewithal to hold agencies legally accountable to ambiguous Bond language.

It should be noted that many of these Bond apologists also proclaimed that the Bay-Delta Accords would restore fisheries, that “we would get well together” under CalFed and that Delta Vision’s “co-equal goals” was a path to restoration rather than the nightmare of BDCP that it spawned. Indeed, a number of these environmental apologists had a seat at the table, as fisheries collapsed, throughout the CalFed process and are signatories to and have integrally participated within the BDCP process. Those who treasure California’s rivers and fisheries can take little comfort in their track record or promises.

For the sake of California’s rivers and fisheries, CSPA urges a no vote on Proposition 1!