

# **Water Infrastructure Funding Act of 2022**

## **SECTION 1. TITLE**

This measure shall be known and may be cited as the “Water Infrastructure Funding Act of 2022.”

## **SECTION 2. STATEMENT OF FINDINGS AND DECLARATION OF PURPOSE AND INTENT**

The People of the State of California find and declare all of the following:

(A) Safe, sufficient and affordable water is a human right and fundamental to our quality of life and key to the economic development of our community. Previous Constitutional Amendments have prioritized spending for public education, public safety and transportation.

(B) It is long-past time for Californians to prioritize spending to increase California’s storage and supply of clean, safe drinking water for homes and businesses, water for agricultural use, and treatment, purification, and reclamation of stormwater and wastewater, while maintaining protection for the environment. Short-term and long-term drought resiliency requires an increase in the supply of water, through surface and subsurface storage, waste water treatment and reuse, and desalination, including ocean and inland brackish water.

(C) Water projects take years to permit, and, once issued, those permits can be subject to lengthy litigation, delaying the realization of new water supplies.

(D) Therefore, the people of the State of California hereby enact the “Water Infrastructure Funding Act of 2022” (the “Act”) to:

(1) Require the transfer of two percent (2%) of the State’s General Fund Revenue each and every year into a trust account until the State certifies that water projects funded, in whole or in part, have created a minimum increase of five million acre-feet (5,000,000 AF) of additional annual water supply that can be reliably delivered to Californians every year thereafter;

(2) Provide “pay-as-you-go” funding for certain water projects, including those ready for immediate construction, while also authorizing the issuance of general obligation bonds which may be repaid using up to half of the revenue transferred into the trust account each year for larger, longer-term water projects, all for the purpose of creating a minimum of five million acre-feet (5,000,000 AF) of additional annual water supply;

(3) Require that such projects include new or increased storage capacity in reservoirs and aquifers, desalination, recycling and treatment of waste and stormwater, repair and upgrade to water systems for the delivery of clean, safe drinking water for homes and businesses, water for agricultural uses, and other projects designed to increase the safe and affordable supply of water to all Californians;

(4) Except as necessary to repay any outstanding bonds issued pursuant to this Act, this annual minimum funding requirement shall become inoperative upon the State’s certification that a

minimum of five million acre-feet (5,000,000 AF) of additional annual water supply capacity has been created and is being delivered to California's urban and agricultural consumers; and

(5) Provide for streamlined administrative processing and judicial review of water projects funded, in whole or in part, by this Act or otherwise certified by the California Water Commission as a drought resiliency project that would help achieve a minimum of five million acre-feet (5,000,000 AF) of additional annual water supply capacity.

### **SECTION 3. MINIMUM FUNDING GUARANTEE FOR WATER INFRASTRUCTURE PROJECTS**

Section 2.5 is added to Article X of the Constitution to read:

SEC 2.5(a) The Treasurer shall annually transfer an amount equal to two percent (2%) of all state revenues which may be appropriated pursuant to Article XIII B, from the General Fund to the Water Supply Infrastructure Trust Account, which is hereby created in the State Treasury. The first annual transfer shall occur in the first fiscal year following the effective date of this section.

(b) Moneys in the trust account are hereby continuously appropriated, notwithstanding Section 13340 of the Government Code, to the California Water Commission for its actual cost of implementing this act, and for allocation for projects that will help achieve the creation of a minimum of five million acre-feet (5,000,000 AF) of additional annual water supply capacity, including, and limited to, the following project categories:

(1) Development or expansion of groundwater aquifer storage, remediation, and recovery projects;

(2) Recycling, purification, and treatment of stormwater and wastewater to water reuse standards, including, but not limited to, current drinking water standards at the time the project is approved;

(3) Expansion, repair, or replacement of existing surface reservoirs, and construction of new surface reservoirs;

(4) Desalination plants;

(5) Water conveyance development, maintenance, or expansion, for the delivery of clean, safe drinking water for homes and businesses, and water for agricultural uses, consistent with area-of-origin water rights;

(6) Other projects designed to increase the clean, safe and affordable supply of water to all Californians with emphasis on California's disadvantaged communities, and other projects designed to increase conservation; and

(7) Research and development of new technologies designed to increase the clean, safe and affordable supply of water to all Californians, subject to an annual limit of no more than two percent (2%) of available funds.

(c) The Commission shall allocate and provide funding or, where applicable, additional funding in an amount necessary to complete a project that will begin delivery of water to California's urban and agricultural consumers from the Trust Account, subject to the following priorities:

(1) The project is approved by the Commission as submitted pursuant to Section 79750(b) and (c) of the Water Code, on or before July 1, 2021;

(2) The applicant is a public agency, special district, joint powers authority, or a public-private partnership for the entitlement, design, construction, operation, and maintenance of the project, and the project will be owned, in whole or in part, by the applicant;

(3) The applicant is ready and able to commence the project immediately upon issuance of all necessary construction permits and will complete the project and begin delivery of water to California's urban and agricultural consumers within five years from the allocation;

(4) The applicant is ready and able to commence the project immediately upon issuance of all necessary construction permits and will complete the project and begin delivery of water to California's urban and agricultural consumers within a reasonable period of time; and

(5) All other projects that the Commission reasonably determines are consistent with the objectives of subdivision (b).

(d) Both of the following requirements apply as a condition of allocating funding to any project from the Trust Account:

(1) The applicant must certify, to the Commission's satisfaction, that one of the following requirements is satisfied:

(A) The project is a public work for which prevailing wages must be paid for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(B) The project is not a public work, but all contractors and subcontractors employing construction workers on the project will be required to pay those workers at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(2) The applicant must certify, to the Commission's satisfaction, that all contractors and subcontractors employing construction workers on the project will be required to use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(e) The Commission shall not accept a certification pursuant to subdivision (d) unless the applicant demonstrates, to the Commission's satisfaction, that construction workers or their representatives will have adequate means to monitor and enforce contractors' and subcontractors' compliance with the requirements.

(f) Except as necessary to repay any outstanding bonds issued pursuant to this Act, this section shall become inoperative upon the State's certification that a minimum of five million acre-feet (5,000,000 AF) of additional annual water supply capacity has been created after the effective date

of this section by the projects specified in subdivision (b), and projects otherwise certified by the Commission as drought resiliency projects, and is being delivered to California's urban and agricultural consumers. For purposes of this section, "additional annual water supply capacity" shall be measured as follows:

(1) For water storage projects, including the necessary infrastructure to convey the additional water supply created, funded by this Act, or certified by the Commission as a drought resiliency project, the amount of additional annual water supply capacity shall be calculated based on the average annual yield the projects produce instead of their storage capacities.

(2) For water recycling, treatment, purification to reuse standards (including, but not limited to, drinking water standards), desalination, and other projects, including the necessary infrastructure to convey the additional water supply created, funded by this Act, or certified by the Commission as a drought resiliency project, the amount of new annual water supply capacity shall be calculated based on average annual output capacity.

(3) For projects partially funded under this section, the amount of new annual water supply capacity shall be calculated based on their average annual yield without regard to the percent of funding provided under this section compared to total project funding.

(4) For projects designed to increase water conservation, up to one million acre-feet (1,000,000 AF) of water conserved annually may count towards the five million acre-feet (5,000,000 AF) of additional annual water supply capacity as required in subdivision (b).

(5) If the State, any public agency, or the federal government, eliminates any water producing infrastructure, or by regulation reduces the supply of water from existing infrastructure, that existed prior to the effective date of this Act and provided water for urban and agricultural consumers, the Commission shall increase the minimum requirement of creating five million acre-feet (5,000,000 AF) of additional annual water supply capacity by the same amount of water supply reduced by the elimination of such infrastructure or reduction of supply from such infrastructure.

(g) The projects funded or partially funded by this section, including projects identified in subdivision (c)(1), shall be deemed to be for the reasonable and beneficial use of the state's water resources and such uses are in the interest of the people, and for their public welfare as provided in Section 2 of this article.

(h) The Commission may enact regulations pursuant to the Administrative Procedures Act to implement this section.

(i) Notwithstanding any other provision of law, the Commission is prohibited from:

(1) Utilizing or developing any beneficial use rating when allocating funding from the Trust Account to projects pursuant to this section;

(2) Delegating, assigning, partitioning, or otherwise transferring any responsibilities, duties, or obligations as assigned by this section to any other new or existing state department or agency; and

(3) Authorizing, permitting, or encouraging any other state department or agency from actively interfering with or otherwise delaying projects that qualify for funding pursuant to this section.

(j) Within the Trust Fund, the Commission shall establish an account for the legal defense of the Act and of projects allocated funding pursuant to the Act, including the Water Supply Infrastructure Bond Act of 2022. The Commission shall allocate money in the Trust Fund to the account, as necessary, to provide money to any public agency requesting assistance to reimburse the necessary and actual legal defense costs associated with a project, and shall reimburse the Department of Justice, if the Department undertakes the legal representation of the State or the Commission.

(k) This Act is intended to supplement, and not supplant, existing funding for water infrastructure projects. Thus, any funding for such a project by this Act shall not preempt, nullify, or in any way impede, any existing funding for these projects, to the extent work has begun or will be performed on the projects on or after the effective date of this section.

(l) On or before June 30 of each fiscal year, the Chair of the California Water Commission shall certify, under penalty of perjury, the amount, by acre-feet, of additional annual water supply capacity that has been created after the effective date of this section by the projects specified in subdivision (b) and projects otherwise certified by the Commission as drought resiliency projects and is being delivered to California's urban and agricultural consumers. When the Chair determines that a minimum of five million acre-feet (5,000,000 AF) of additional annual water supply capacity has been created after the effective date of this section by the projects specified in subdivision (b) and projects otherwise certified by the Commission as drought resiliency projects and is being delivered to California's urban and agricultural consumers, such certification shall be reviewed by the State Auditor. If the State Auditor confirms the Chair's certification, the Chair shall notify the Governor, the Treasurer, and the Legislature.

(m) After the State certifies that a minimum of five million acre-feet (5,000,000 AF) of additional annual water supply capacity has been created after the effective date of this section by the projects specified in subdivision (b) and projects otherwise certified by the Commission as drought resiliency projects and is being delivered to California's urban and agricultural consumers pursuant to subdivision (l), any funds remaining in the Trust Fund shall be used to pay down any remaining bond debt authorized by this Act.

(n) Nothing in this section diminishes, impairs, or otherwise affects in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law.

#### **SECTION 4. WATER SUPPLY INFRASTRUCTURE BOND ACT OF 2022**

Division 26.8 (commencing with Section 79800) is added to the Water Code to read:

##### **DIVISION 26.8. WATER SUPPLY INFRASTRUCTURE BOND ACT OF 2022**

###### **Chapter 1. Title/Definitions**

Sec. 79800(a) This division shall be known, and may be cited, as the Water Supply Infrastructure Bond Act of 2022.

(b) As used in this division, the following definitions apply:

(1) “Committee” means the Water Supply Infrastructure Finance Committee created pursuant to Section 79806.

(2) “Fund” means the Water Supply Infrastructure Fund created pursuant Section 79801.

(3) “Public agency” means a board, commission, county, city and county, city, regional agency, district, federally recognized Indian tribe, other public entity, or public-private partnership.

(4) “State General Obligation Bond Law” means the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), as it may be amended from time to time.

(5) “Water Supply Infrastructure Trust Account” means the Water Supply Infrastructure Trust Account created pursuant to Section 2.5 of Article X of the Constitution.

## Chapter 2. General Provisions

Sec. 79801. The proceeds of bonds, excluding those issued in accordance with Section 79813, issued and sold pursuant to this Bond Act, shall be deposited in the Water Supply Infrastructure Fund, which is hereby created in the State Treasury. All moneys in the fund, notwithstanding Section 13340 of the Government Code, are hereby continuously appropriated without respect to fiscal years for the purposes of this Bond Act.

Sec. 79802. An eligible applicant that is allocated funds for a water supply infrastructure project pursuant to this Bond Act, shall not use more than five percent (5%) of the funds allocated for the project to pay the administrative costs of the project.

Sec. 79803(a) The bonds issued pursuant to Section 79804 shall be available for the construction and acquisition of capital asset water supply infrastructure projects that will help achieve the creation of a minimum of five million acre-feet (5,000,000 AF) of additional water supply, as provided in Section 2.5 of Article X of the Constitution.

(b) Water supply infrastructure projects eligible for funding pursuant to this Bond Act shall be approved by the California Water Commission based on the priorities stated in subdivision (c) of Section 2.5 of Article X of the Constitution and allocated to eligible projects that will help achieve the creation of a minimum of five million acre-feet (5,000,000 AF) of additional water supply per year, including:

(1) Development or expansion of groundwater aquifer storage, remediation, and recovery projects;

(2) Recycling, purification, and treatment of stormwater and wastewater to water reuse standards, including, but not limited to, current drinking water standards at the time the project is approved;

(3) Expansion, repair, or replacement of existing surface reservoirs, and construction of new surface reservoirs;

(4) Desalination plants;

(5) Water conveyance development, maintenance, or expansion, for the delivery of clean, safe drinking water for homes and businesses, and water for agricultural uses consistent with area-of-origin water rights;

(6) Other projects designed to increase the clean, safe and affordable supply of water to all Californians with emphasis on California's disadvantaged communities, and other projects designed to increase conservation.

(c) The requirements of subdivisions (d) and (e) of Section 2.5 of Article X of the Constitution shall apply to all projects allocated funding pursuant to this Bond Act.

Sec. 79803.5 This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law.

### Chapter 3. Fiscal Provisions

Sec. 79804(a) Bonds, equal to an amount wherein principal and interest payments do not exceed fifty percent (50%) of the amount annually transferred from the General Fund pursuant to Section 2.5 of Article X of the Constitution, not including the amount of any refunding bonds issued in accordance with Section 79813, shall be issued and sold for the purposes expressed in Sections 79802 and 79803, inclusive, and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The committee shall annually estimate the allowable amount of bonds that may be issued, and the bonds shall be retired within fifty (50) years of the time of contracting. The bonds, when sold, issued, and delivered, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) The Treasurer shall issue and sell the bonds authorized in subdivision (a) in the amount determined by the committee pursuant to Section 79807. The bonds shall be issued and sold upon the terms and conditions specified in a resolution to be adopted by the committee pursuant to Section 16731 of the Government Code.

Sec. 79805(a) The bonds authorized by this Bond Act shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law, and all of the provisions of that law apply to the bonds, and this Bond Act, and are hereby incorporated as though set forth in full in this Bond Act.

(b) For purposes of this Bond Act, the references to "committee" in the State General Obligation Bond Law shall mean the Water Supply Infrastructure Finance Committee created in Section 79806, and the references to "board" in the State General Obligation Bond Law shall mean the California Water Commission.

Sec. 79806(a) Solely for the purpose of authorizing the issuance and sale pursuant to the State General Obligation Bond Law of the bonds authorized by this Bond Act, the Water Supply Infrastructure Finance Committee is hereby created.

(b) The committee consists of the Controller, the Treasurer, the Director of Finance, and the Chair of the California Water Commission. Notwithstanding any other law, any member may designate a representative to act in the member's place for all purposes, as though the member were personally present.

(c) The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

Sec. 79807. The committee shall determine by resolution the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

Sec. 79808. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds becoming due each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

Sec. 79809(a) Notwithstanding Section 13340 of the Government Code, there is hereby continuously appropriated from the Water Supply Infrastructure Trust Account, for the purposes of this Bond Act, and without regard to fiscal years, an amount that equals the total of both of the following:

(1) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this Bond Act, as the principal and interest become due and payable.

(2) The sum necessary to carry out Section 79811.

(b) If there is insufficient funding in the Water Supply Infrastructure Trust Account to pay the amounts described in subdivision (a), any excess amount is, notwithstanding Section 13340 of the Government Code, hereby continuously appropriated from the General Fund in the State Treasury to pay the amounts described in subdivision (a).

Sec. 79810. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this Bond Act, less any amount withdrawn pursuant to Section 79811 and not yet returned to the Water Supply Infrastructure Trust Account. The amount of the request shall not exceed the amount of the unsold bonds that the committee has, by resolution, authorized to be sold for the purpose of carrying out this Bond Act, excluding any refunding bonds authorized pursuant to Section 79813, less any amount loaned pursuant to this section and not yet repaid and any amount withdrawn from the Water Supply Infrastructure Trust Account pursuant to Section 79811 and not yet returned to the Water Supply Infrastructure Trust Account. The board



shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this Bond Act.

Sec. 79811. For the purposes of carrying out this Bond Act, the Director of Finance may authorize the withdrawal from the Water Supply Infrastructure Trust Account of an amount not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this Bond Act, excluding any refunding bonds authorized pursuant to Section 79813, less any amount loaned pursuant to Section 79810 and not yet repaid, and any amount withdrawn from the Water Supply Infrastructure Trust Account pursuant to this section and not yet returned to the Water Supply Infrastructure Trust Account. Any amounts withdrawn shall be deposited in the fund. Any moneys made available under this section shall be returned to the Water Supply Infrastructure Trust Account from proceeds received from the sale of bonds for the purpose of carrying out this Bond Act.

Sec. 79812. All moneys deposited in the fund that are derived from premium and accrued interest on bonds sold pursuant to this Bond Act, shall be reserved in the fund and shall be available for transfer to the Water Supply Infrastructure Trust Account as a credit to expenditures for bond interest, except those amounts derived from premium may be reserved and used to pay the cost of bond issuance before any transfer to the Water Supply Infrastructure Trust Account.

Sec. 79813. The bonds issued and sold pursuant to this Bond Act, may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state of the measure adding this division to the Water Code includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this Bond Act, or any previously issued refunding bonds. Any bond refunded with the proceeds of refunding bonds as authorized by this section may be legally defeased to the extent permitted by law in the manner and to the extent set forth in the resolution, as amended from time to time, authorizing that refunded bond.

Sec. 79814. Notwithstanding any other provision of this Bond Act, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this Bond Act, that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions or is otherwise entitled to any federal tax advantage, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment of earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds or earnings required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

Sec. 79815. The proceeds from the sale of bonds authorized by this Bond Act, are not “proceeds of taxes” as that term is used in Article XIII B of the Constitution, and the disbursement of these proceeds is not subject to the limitations imposed by that article.

## **SECTION 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE AND STREAMLINED REVIEW**

Article 7 (commencing with Section 21159.50) of Chapter 4.5 of Division 13 of the Public Resources Code is added to read:

Sec. 21159.50(a) Except as provided in Section 21159.51, the provisions of the California Environmental Quality Act (“CEQA”) shall apply to water projects allocated funding in whole or in part by Section 2.5 of Article X of the Constitution or the Water Supply Infrastructure Bond Act of 2022 or certified as a drought resiliency project pursuant to Section 21159.52.

(b) Notwithstanding subdivision (a), the Water Commission’s determination to (1) allocate funding pursuant to Section 2.5 of Article X of the Constitution or the Water Supply Infrastructure Bond Act of 2022 or (2) certify a project as a drought resiliency project pursuant to Section 21159.52 shall not constitute a “project” pursuant to Section 21065 of the Public Resources Code and shall be exempt from CEQA.

Sec. 21159.51(a) Projects allocated funding in whole or in part by Section 2.5 of Article X of the Constitution or the Water Supply Infrastructure Bond Act of 2022 or certified as a drought resiliency project pursuant to Section 21159.52 may elect to be subject to streamlined review of an agency’s compliance with the California Environmental Quality Act (“CEQA”) as follows:

(1) For projects electing to be governed by the provisions of this section, within 10 days of the project’s allocation of funding or certification as described in subdivision (a), the lead agency shall issue a public notice providing the following:

“THE APPLICANT HAS ELECTED TO PROCEED UNDER PUBLIC RESOURCES CODE SECTION 21159.51, WHICH PROVIDES, AMONG OTHER THINGS, THAT ANY JUDICIAL ACTION CHALLENGING AN AGENCY’S COMPLIANCE WITH CEQA OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE ENVIRONMENTAL DETERMINATION IS SUBJECT TO THE PROCEDURES SET FORTH IN PUBLIC RESOURCES CODE SECTION 21159.51. A COPY OF PUBLIC RESOURCES CODE SECTION 21159.51 IS INCLUDED BELOW.”

(2) The public notice shall be distributed by the lead agency as required for public notices issued pursuant to paragraph (3) of subdivision (b) of Section 21092.

(b) Notwithstanding any other law, the procedures set forth in this section shall apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification or approval of any environmental determination or granting of project approvals for a project electing to be governed by the provisions of this section.

(c) Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by the Judicial Council, shall apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification or approval of any environmental determination or granting of project approvals for a project electing to be governed by the provisions of this section, to require the action or proceeding, including any potential appeals therefrom, to be resolved, to the extent feasible, within two hundred seventy (270) days of the filing of the certified record of proceedings with the court. For purposes of this Article, “environmental determination” means an environmental impact report, mitigated negative declaration, negative declaration, categorical

exclusion, a determination that the project is not subject to CEQA, or a determination that no additional environmental review is required.

(d) Notwithstanding any other law, in connection with any environmental review following allocation of funding or certification for a project electing to be governed by the provisions of this section, the preparation and certification of the administrative record shall be performed in the following manner at the applicant's expense:

(1) The lead agency or responsible state agency (for purposes of this section, the "Agency") shall prepare the record of proceedings pursuant to this division concurrently with the administrative process.

(2) All documents and other materials placed in the record of proceedings after the project's allocation of funding under Section 2.5 of Article X of the Constitution or the Water Supply Infrastructure Bond Act of 2022 or certification under Section 21159.52 shall be posted on, and be downloadable from, an Internet Web site maintained by the Agency commencing with the date of the release of the project's draft environmental impact report or other environmental determination.

(3) The Agency shall make available to the public in a readily accessible electronic format the project's draft environmental impact report or other environmental determination and all other documents submitted to, or relied on by, the Agency in the preparation of the project's draft environmental impact report or other environmental determination.

(4) A document prepared by the Agency or submitted by the applicant after the date of the release of the project's draft environmental impact report or other environmental determination that is a part of the record of the proceedings shall be made available to the public in a readily accessible electronic format within five (5) business days after the document is released or received by the Agency.

(5) The Agency shall encourage written comments on the project to be submitted in a readily accessible electronic format, and shall make any comment available to the public in a readily accessible electronic format within five (5) business days of receipt.

(6) Within seven (7) business days after the receipt of any comment that is not in an electronic format, the Agency shall convert that comment into a readily accessible electronic format and make it available to the public in that format.

(7) Notwithstanding paragraphs (2) to (6), inclusive, documents submitted to or relied on by the Agency that were not prepared specifically for the project and are copyright protected are not required to be made readily accessible in an electronic format. For those copyright-protected documents, the Agency shall make an index of these documents available in an electronic format no later than the date of the release of the project's draft environmental impact report or other environmental determination, or within five business days if the document is received or relied on by the Agency after the release of the project's draft environmental impact report or environmental determination. The index shall specify the libraries or Agency offices in which hardcopies of the copyrighted materials are available for public review.

(8) The Agency shall certify the final record of proceedings within five (5) days of its approval of the project.

(9) Any dispute arising from the record of proceedings shall be resolved by the Superior Court. Unless the Superior Court directs otherwise, a party disputing the content of the record shall file a motion to augment the record at the time it files its initial brief.

(10) The contents of the record of proceedings shall be as set forth in subdivision (e) of Section 21167.6.

(e) (1) In granting relief in an action or proceeding subject to this section, the court shall not stay or enjoin the construction or operation of any project described in subdivision (a) unless the court finds either (i) that the continued construction or operation of the project presents an imminent threat to public health and safety, or (ii) that the project site contains unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values that would be materially, permanently, and adversely affected by the continued construction or operation of the project unless the court stays or enjoins the construction or operation of the project.

(2) If the court finds that either (i) or (ii) of subsection (1) is satisfied, the court shall only enjoin those specific activities associated with the project that present an imminent threat to public health and safety or that materially, permanently, and adversely affect unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values.

(f) With respect to projects described in subdivision (a), for a period of five (5) years after the certification or adoption of the project's most recent environmental determination, subdivisions (b) and (c) of Section 21166 of the Public Resources Code shall not apply and "substantial changes" as used in subdivision (a) of Section 21166 of the Public Resources Code shall only mean changes to the project that result in more than a five percent (5%) increase in the project's total floor area and/or production capacity, beyond the scope of the project analyzed in the project's environmental determination.

(g) This section applies prospectively and retroactively to any approvals by a lead agency or a responsible agency for a project electing to proceed pursuant to this section. This section also applies prospectively and retroactively to any such project with any causes of action and claims that are pending as of the effective date of this section and for which no final non-appealable judgment has been entered prior to the effective date of this section.

Sec. 21159.52(a) A person proposing to construct a water supply project may apply to the Water Commission for certification that the water supply project is a drought resiliency project eligible for streamlining provided by this Article. The person shall supply evidence and materials that the Water Commission deems necessary to make a decision on the application. Any evidence or materials submitted for certification review shall be made available to the public at least fifteen (15) days before the Water Commission certifies a project pursuant to this Article.

(b) Within sixty (60) days of receipt of the evidence and materials described in subdivision (a), the Water Commission shall certify a project as a drought resiliency project if the evidence and materials provided demonstrate that:

(1) The project falls within one or more of the following project categories:

(i) Development or expansion of groundwater aquifer storage, remediation, and recovery projects;

(ii) Recycling, purification, and treatment of stormwater and wastewater to water reuse standards, including but not limited to current drinking water standards at the time the project is approved;

(iii) Expansion, repair, or replacement of existing surface reservoirs, and construction of new surface reservoirs;

(iv) Desalination plants;

(v) Water conveyance development, maintenance, or expansion, for the delivery of clean, safe drinking water for homes and businesses, and water for agricultural uses consistent with area-of-origin water rights;

(vi) Other projects designed to increase the clean, safe and affordable supply of water to all Californians with emphasis on California's disadvantaged communities, and other projects designed to increase conservation; or

(vii) Research and development of new technologies designed to increase the clean, safe and affordable supply of water to all Californians;

(2) The project will help achieve the creation of a minimum of five million acre-feet (5,000,000 AF) of additional annual water supply capacity; and

(3) The project will satisfy the requirements of subdivisions (d) and (e) of Section 2.5 of Article X of the Constitution.

(c) A project is not required to be eligible for or receive funding under Article X, Section 2.5 of the Constitution or the Water Supply Infrastructure Bond Act of 2022 in order to be certified as a drought resiliency project pursuant to this Section.

(d) The Water Commission may issue guidelines regarding application and certification of projects under this section. Any guidelines issued under this section are not subject to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(e) This Section shall become inoperative upon the State's certification pursuant to Article X, Section 2.5(e) that a minimum of five million acre-feet (5,000,000 AF) of additional annual water supply capacity has been created and is being delivered to California's urban and agricultural consumers.

## **SECTION 6. CALIFORNIA COASTAL COMMISSION REVIEW**

Section 30412.5 of the Public Resources Code is added to read:

Sec. 30412.5(a) Notwithstanding any other provision of law, with respect to any project allocated funding in whole or in part by Section 2.5 of Article X of the Constitution or the Water Supply Infrastructure Bond Act of 2022 or certified as a drought resiliency project pursuant to Section 21159.52 of the Public Resources Code, the Secretary of the California Natural Resources Agency shall have the authority to review, approve, deny, and/or issue any Coastal Commission action or inaction for such project, including without limitation, any coastal development permits or denials arising out of an appeal of an approval or a denial by a local government pursuant to a local coastal program or part thereof certified under Chapter 6 of Division 20 of the Public Resources Code, pursuant to the procedures set forth in this section. For purposes of this section, any project meeting the requirements of this subdivision (a) shall be referred to as an "eligible water project." For purposes of this section, an appeal of an approval or a denial by a local government of an eligible

water project pursuant to a local coastal program or part thereof certified under Chapter 6 of Division 20 of the Public Resources Code, including all local implementing ordinances and regulations related thereto, shall be referred to as a “local coastal program appeal.”

(b) The Secretary of the California Natural Resources Agency shall have the authority to review the Coastal Commission action or inaction with respect to any eligible water project subject to subdivision (a) as set forth herein:

(1) Notwithstanding Article 5 of Chapter 4.5 of Division 1 of Title 7 of the Government Code, the Coastal Commission shall render a final decision on any coastal development permit application, and/or local coastal program appeal(s) for an eligible water project subject to subdivision (a) within ninety (90) days after submission of the application and/or local coastal program appeal or the Coastal Commission determines the application and/or local coastal program appeal is complete, whichever may occur first. If the Coastal Commission fails to act within such ninety-day (90 day) time period, the coastal development permit application and/or local coastal program appeal(s) shall be transferred to the Secretary of the California Natural Resources Agency, who shall render a final decision on such application and/or local coastal program appeal(s).

(2) Within thirty (30) days following any decision by the Coastal Commission on an eligible water project subject to subdivision (a), a project applicant may appeal the Coastal Commission’s decision to the Secretary of the California Natural Resources Agency.

(3) For any Coastal Commission decision related to any eligible water project subject to subdivision (a) issued subsequent to September 1, 2021, but before the effective date of this section, the project applicant may appeal any such decision to the Secretary of the California Natural Resources Agency within thirty (30) days of the effective date of this section.

The Secretary may grant or deny any appeal filed pursuant to this subdivision, and shall render a final decision on any such appeal within ninety (90) days of the filing of such appeal. Should the Secretary approve any coastal development permit(s) for the eligible water project, or grant any appeal filed hereunder, the Secretary may direct the Commission to issue the coastal development permit(s) or take any other action, on those terms and conditions that the Secretary may determine, in the Secretary’s sole discretion, are appropriate. In issuing such approval or direction regarding any such coastal development permit, the Secretary shall rely upon the project’s previous environmental determination(s) and no further environmental review shall be required under Division 13 (commencing with Section 21000) of the Public Resources Code. The Secretary shall adopt findings that reflect the action of the Secretary based upon prior environmental review. In reviewing the coastal development permit application and/or local coastal program appeal(s), or any other decision, the Secretary shall consider the State’s interest in diverse and resilient water supplies and mitigating the effects of drought on such supplies, and may conclude that such interests require modification of any decision of the Coastal Commission, or any condition imposed by the Coastal Commission on the eligible water project.

(c) Notwithstanding the Secretary of the California Natural Resources Agency’s certification of the regulatory program of the Coastal Commission dealing with the consideration and granting of coastal development permits pursuant to Section 21080.5 of the Public Resources Code, in

assessing the conformity of an eligible water project with Chapter 3 (commencing with Section 30200) of the Public Resources Code and, if applicable, the local government's certified local coastal program for those portions of the project on appeal to the Coastal Commission, the Coastal Commission shall rely exclusively upon any environmental impact report or other environmental review document previously certified or adopted by the lead agency (and any responsible state agency, if applicable) pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code, and the Coastal Commission shall not require any new or revised environmental review pursuant to the California Environmental Quality Act prior to acting on such.

(d) Notwithstanding any other provision of law, including but not limited to Chapter 4, Article 3, and Chapter 5, Article 1, of Division 20 of the Public Resources Code, the Secretary of the California Natural Resources Agency is designated as a state agency charged with implementation of Section 307 of the Federal Coastal Zone Management Act of 1972 (16 U.S.C. § 1456), and any regulations promulgated thereunder, with respect to decisions made by the Secretary pursuant to this section. In exercising such authority, the Secretary shall interpret and apply the applicable policies set forth in the certified California Coastal Management Program, including, but not limited to, the applicable policies set forth in Chapter 3 of Division 20 of the Public Resources Code, and shall determine the consistency of such eligible water project with such policies. This section shall be submitted by the Governor to the United States Secretary of Commerce for certification as part of the California Coastal Management Program consistent with the requirements of 16 U.S.C. § 1455, subdivision (e) and 15 C.F.R. Part 923, subpart H.

(e) This section applies prospectively and retroactively to any approvals or denials of permits for an eligible water project under Division 20 of the Public Resources Code or any local coastal program or part thereof approved by a local government lying, in whole or in part, within the coastal zone and certified under Chapter 6 of Division 20 of the Public Resources Code.

(f) The Coastal Commission may provide comment to the Water Commission during the Water Commission's funding allocation process pursuant to Section 2.5 of Article X of the Constitution or the Water Supply Infrastructure Bond Act of 2022.

## **SECTION 7. MANDATORY AUDITS**

Article 5 (commencing with Section 8549.50) of Chapter 6.5 of Division 1 of Title 2 of the Government Code is added to read:

Sec. 8549.50(a) The California State Auditor shall annually conduct a programmatic review and an audit of expenditures from the Water Supply Infrastructure Fund and the Water Supply Infrastructure Trust Account.

(b) Notwithstanding Section 10231.5 of the Government Code, the California State Auditor shall report its findings under subdivision (a) annually on or before March 1 to the Governor, and to the Legislature in compliance with Section 9795 of the Government Code, and shall make the findings publicly available.

(c) If an audit of an entity that receives funding under this article is conducted pursuant to state law and reveals any impropriety, the California State Auditor or the Controller may conduct a full

audit of any or all of the activities of that entity. If the audit reveals erroneous or inappropriate spending of funding received under Section 2.5 of Article X of the California Constitution or the Water Supply Infrastructure Bond Act of 2022 by a public agency, the public agency shall, if the California Water Commission determines the erroneous or inappropriate spending was intentional, repay the moneys to the California Water Commission for deposit into the Water Supply Infrastructure Trust Account or the Water Supply Infrastructure Fund, as applicable.

## **SECTION 8. GENERAL PROVISIONS**

(A) The provisions of this Act are severable. If any provision of this Act, or any part thereof, or its application, is for any reason held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect any other provision or application that can be given effect without the invalid provision or application. The People of the State of California hereby declare that they would have adopted this Act and each and every portion, section, subdivisions, paragraph, clause, sentence, phrase, word, and application not declared invalid or unconstitutional irrespective of whether any portion of this Act or application thereof are subsequently declared invalid or unconstitutional.

(B) This Act is intended to be comprehensive. It is the intent of the people that in the event this Act and acts relating to the same subject appear on the same statewide election ballot, the provisions of the other act or acts (each, a “Conflicting Act”) shall be deemed to be in conflict with this Act. In the event that this Act and one or more Conflicting Acts are adopted by the voters in the same election, and this Act receives a greater number of affirmative votes, the provisions of this Act shall prevail in their entirety, and all provisions of the Conflicting Acts shall be null and void.

(C) (1) Except as provided in paragraph (2), the Attorney General shall defend against any action challenging, in whole or in part, the validity of this Act, and shall have an unconditional right to intervene in any action to defend the validity of this Act.

(2) If the Attorney General declines to defend the validity of this Act in any action, the Attorney General shall nonetheless file an appeal from, or seek review of, any judgment of any court that determines that the Act is invalid, in whole or in part, if necessary or appropriate to preserve the State’s standing to defend the law in conformity with the Attorney General’s constitutional duty to see that the laws of the state are adequately enforced.

(3) The official proponent(s) of this Act have an unconditional right to participate, either as interveners or real parties in interest, in any action affecting the validity or interpretation of this Act. Where the Governor and Attorney General have declined to defend the validity of the Act, the official proponents are also authorized to act on the State’s behalf in asserting the State’s interest in the validity of this Act in any such action and to appeal from any judgment invalidating this Act.

(4) Nothing in this section precludes other public officials from asserting the State’s interest in the validity of this act.

(5) This Act must be broadly construed, interpreted, and implemented in order to achieve the purposes in Section 2.