



# San Gabriel Valley Council of Governments

## AGENDA AND NOTICE

### OF THE JOINT MEETING OF THE WATER POLICY COMMITTEE & WATER TECHNICAL ADVISORY COMMITTEE (TAC)

Tuesday, April 10, 2018, 10:00 AM

Upper San Gabriel Valley Municipal Water District – 602 E. Huntington Dr., Monrovia, CA

#### Water Policy Committee

**Chair: Diana Mahmud**  
City of South Pasadena

**Vice-Chair: Judy Nelson**  
City of Glendora

#### Members

Claremont  
Diamond Bar  
Glendora  
Monrovia  
Rosemead  
Sierra Madre  
South Pasadena  
West Covina

#### Water TAC

**Chair: David Dolphin**  
City of Alhambra

**Vice Chair:**  
Upper San Gabriel Valley  
Municipal Water District

#### Members

Alhambra  
Arcadia  
Bradbury  
Covina  
Monrovia  
Sierra Madre  
South Pasadena  
LA County DPW  
San Gabriel Valley  
Municipal Water District

Upper San Gabriel Valley  
MWD

#### Ex-Officio Members

Foothill MWD  
LA County Sanitation  
Districts  
SG Basin Watermaster

Thank you for participating in today's meeting. The Water Committee encourages public participation and invites you to share your views on agenda items.

**MEETINGS:** *Regular Meetings of the Water Committee are held on the third Wednesday of each month at 10:00 AM at the Upper San Gabriel Valley Municipal Water District Offices 602 E. Huntington Drive, Suite B Monrovia, CA 91016.* The agenda packet is available at the San Gabriel Valley Council of Government's (SGVCOG) Office, 1000 South Fremont Avenue, Suite 10210, Alhambra, CA, and on the website, [www.sgvco.org](http://www.sgvco.org). Copies are available via email upon request ([sgv@sgvco.org](mailto:sgv@sgvco.org)). Documents distributed to a majority of the Committee after the posting will be available for review in the SGVCOG office and on the SGVCOG website. Your attendance at this public meeting may result in the recording of your voice.

**CITIZEN PARTICIPATION:** Your participation is welcomed and invited at all Water Committee and Water TAC meetings. Time is reserved at each regular meeting for those who wish to address the Committee. SGVCOG requests that persons addressing the Committee refrain from making personal, slanderous, profane or disruptive remarks.

**TO ADDRESS THE COMMITTEE:** At a regular meeting, the public may comment on any matter within the jurisdiction of the Committee during the public comment period and may also comment on any agenda item at the time it is discussed. At a special meeting, the public may only comment on items that are on the agenda. Members of the public wishing to speak are asked to complete a comment card or simply rise to be recognized when the Chair asks for public comments to speak. We ask that members of the public state their name for the record and keep their remarks brief. If several persons wish to address the Committee on a single item, the Chair may impose a time limit on individual remarks at the beginning of discussion. **The Water Committee and Water TAC may not discuss or vote on items not on the agenda.**

**AGENDA ITEMS:** The Agenda contains the regular order of business of the Water Committee and the Water TAC. Items on the Agenda have generally been reviewed and investigated by the staff in advance of the meeting so that the WRWG Committee can be fully informed about a matter before making its decision.

**CONSENT CALENDAR:** Items listed on the Consent Calendar are considered to be routine and will be acted upon by one motion. There will be no separate discussion on these items unless a Committee member or citizen so requests. In this event, the item will be removed from the Consent Calendar and considered after the Consent Calendar. If you would like an item on the Consent Calendar discussed, simply tell Staff or a member of the Committee.



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the SGVCOG office at (626) 457-1800. Notification 48 hours prior to the meeting will enable the SGVCOG to make reasonable arrangement to ensure accessibility to this meeting.



Preliminary Business

1. Call to Order
2. Roll Call
3. Public Comment (*If necessary, the Chair may place reasonable time limits on all comments*)

**CONSENT CALENDAR** (*It is anticipated that the Water Committee/TAC may act on the following matters*)

4. Water Committee/TAC Meeting Minutes –2/21/2018 Page – 1, 3/21/2018 Page – 7  
*Recommended Action: Approve.*

**PRESENTATION**

**ACTION ITEMS** (*It is anticipated that the Water Committee/TAC may act on the following matters*)

5. Support for Rio Hondo/San Gabriel River E/WMP Modifications  
*Recommended Action: recommend that the Governing Board authorize the Executive Director to submit a letter of support for the changes to the Rio Hondo/San Gabriel River Enhanced Watershed Management Plan.*
6. SB 623 (Monning) Page – 11  
*Recommended Action: Recommend that the Governing Board oppose unless amended to remove the fee on public water systems.*
7. SB 1133 (Portantino) Page – 57  
*Recommended Action: Recommend that the Governing Board support SB 1133.*
8. AB 2538 (Rubio) Page – 69  
*Recommended Action: Recommend that the Governing Board support AB 2538*

**DISCUSSION ITEMS** (*It is anticipated that the Water Committee/TAC may act on the following matters*)

**INFORMATION ITEMS**

9. Legislative Updates: H.R. 465/2355  
*Recommended Action: for information*
10. Regulatory Updates:  
*Recommended Action: for information.*
11. E/WMP Updates
  - RH/SGR
  - East SGV
  - ULAR*Recommended Action: for information.*
12. Water Boards Update
  - Deborah Smith named new LA Regional Board Director Page – 79
  - Update on status of 303(d) list*Recommended Action: for information.*
13. Water Supply Update  
*Recommended Action: for information.*
14. Litigation Update
  - Gardena and Duarte cases*Recommended Action: for information.*
15. Stormwater Outreach Updates
  - Washington, D.C. Meeting Recap Page – 81*Recommended Action: for information.*

**EXECUTIVE DIRECTOR'S COMMENTS**

**CHAIR'S REPORT**

**ANNOUNCEMENTS**

**ADJOURN**





## **SGVCOG Joint Water Policy Committee/TAC Unapproved Minutes**

Date: February 21, 2018  
Time: 10:00 AM  
Location: Upper San Gabriel Valley Municipal Water District  
602 E. Huntington Drive, Monrovia, CA

### **PRELIMINARY BUSINESS**

1. Call to Order: The meeting was called to order at 10:02 A.M.
2. Roll Call

#### **Water Policy Committee Members Present**

N. Lyons, Diamond Bar  
J. Nelson, Glendora  
G. Crudgington, Monrovia  
M. Clark, Rosemead  
D. Mahmud, South Pasadena  
M. Spence, West Covina

#### **Water Policy Committee Members Absent**

Claremont  
Sierra Madre

#### **Water TAC Members Present**

D. Dolphin, Alhambra  
V. Hevener, P. Cranmer, Arcadia  
K. Kearney, Bradbury  
S. Costandi, Covina  
A. Tachiki, Monrovia  
J. Carlson, Sierra Madre  
A. Lasso, G. LACDPW  
E. Reyes, SGVMWD  
T. Love, P. Cortez, T. Fellow USGVMWD

#### **Water TAC Members Absent**

#### **Ex Officio Members Present**

R. Chang, LACSD  
K. Gardner, R. Serna, Watermaster

#### **Ex Officio Members Absent**

#### **Guests**

M. Lyons, ASM Holden  
R. Bryden, LACFCD  
B. Huff, Huff Strategies  
W. La, SGMRC

G. Jaquez, MNS Engineers  
R. Tahir, TECs  
L. Fletes, ASM Rubio

#### **SGVCOG Staff**

E. Wolf

3. Public Comment. None

### **CONSENT CALENDAR**

4. Water Committee/TAC Meeting Minutes – 1/17/2018  
**There was a motion to approve the minutes. (M/S: G. Crudgington/D. Dolphin).**

**[MOTION PASSED]**

<b>AYES:</b>	Covina, Glendora, Monrovia, Rosemead, Sierra Madre, South Pasadena, West Covina, Alhambra, Arcadia, Bradbury, LACDPW, SGVMWD, USGVMWD
<b>NOES:</b>	
<b>ABSTAIN:</b>	Diamond Bar
<b>ABSENT:</b>	Claremont

**PRESENTATION**

**ACTION ITEMS**

**DISCUSSION ITEMS**

**5. Safe, Clean Water Program Elements**

E. Wolf provided a synopsis of the discussion at the four subcommittees (Governance, Project Selection, Disadvantaged Communities, and Rebates/Incentives) that met in early February. Members then discussed our SGVCOG position on these topics.

- Governance. The following comments were offered:

- J. Nelson indicated that this subcommittee is dominated by water agency and IRWMP representatives and is tending toward the IRWMP as the model for governance. She advocated for governance at the COG level.

- K. Gardner believes the IRWMP is the best model. She described the current IRWMP makeup as two-tiered, with projects first being vetted at the subregional level, before final approval by the Leadership Council. The LC makeup includes representatives from groundwater, Sanitation, Open Space, Environmental, LA County, and COGs. Gardner thought that governance at the COG level would require too much of a learning curve for local elected officials. The SGVCOG has a mature Water Policy Committee that could handle oversight, but that is not the case with other COGs. The IRWMP on the other hand, already exists but would require modifying its membership to ensure adequate local government representation.

- R. Bryden offered clarification on the IRWMP process. He stated that projects are first vetted at the subregional watershed level (there are five subregions), before going to the Leadership Council for final determination based on merit, but also considering equitable distribution of funds back to the five subregions.

- D. Mahmud was concerned that as presently structured, IRWMPs are dominated by water supply concerns and do not include due respect for water quality concerns. Permittees must have a stronger voice.

- A. Fellow offered his opinion that governance at the COG level, with access to outside technical expertise as needed, is the best model.

- D. Mahmud offered ideas on how tax revenue should be proportioned. Discussion ensued on the merits of return based on population, versus watershed acreage, versus based on current MS4 liability. Mahmud thought geographic area is best. There was consensus by the group for supporting subregional governance with tax return based on geographical proportion.

- Project Selection. The following comments were offered:

- Working from a strawman scoring criteria put together by the County, D. Mahmud recommended that the scoring include more tiers in order to show greater granularity on a project's value.
- There was consensus that projects currently approved as part of watershed plans should be weighted higher. At the same time, there was agreement that project selection should allow for consideration of newly proposed projects.
- D. Mahmud was concerned that if capture of "new water" is a scoring criterion, SGV will not receive credit for the 95% of stormwater that is already being captured by the Flood Control District. This will make our projects less competitive. She recommended that the SGVCOG advocate for "grandfathering" in our projects if the tax framework includes a requirement that projects produce "new water."
- Rebates. The following comments were given:
  - D. Mahmud described her understanding of the NGO position on rebates/incentives. These groups are advocating that a large portion of the tax revenue go toward residential education and onsite retrofits, such as permeable pavers and water conservation measures.
  - G. Crudginton stated that NGOs initially wanted up to 50% of the tax to be returned to residents for these types of programs. They are now proposing a 5% hardline return.
  - M. Spence and N. Lyons stated a belief that it is not equitable to tax all for the benefit of only a few.
  - It was also noted that administering a rebate/incentive program could be very expensive and eat up a lot of the tax money.

**6. Change the date for Water Policy/TAC meetings**

Because the Water Policy/TAC meetings are often the day prior to Governing Board meetings, not leaving enough time for staff to prepare items for the Board, staff recommended that the date and time of the Water Policy/TAC meetings be changed to the second Tuesday of the month, at 10:00 a.m. Members concurred with this recommendation.

**INFORMATION ITEMS**

**7. Legislative Updates: SB 633, Basin Plan, AB 2538(SB 589), H.R. 465/235**

E. Wolf provided updates on these bills. Sen Portantino intends to introduce the SB 633 language into a budget trailer. SB 1133 (Portantino), is the Basin Plan bill, although it currently only includes spot language. Sen Portantino is also sponsoring, SB 1422, a bill aimed at eliminating plastic micro-pellets used in many commercial products, that can end up in urban runoff. AB 2538 (Rubio), is the spot bill that will include Financial Capability Assessment. This is the language that is coming over from Sen Hernandez' office; formerly SB 589.

**8. Regulatory Updates:**

- State Audit

The results of the state audit are due out by the end of February.

**9. E/WMP Updates**

- RH/SGR

J. Carlson updated the group on the Peck Lake park project and asked that a recommendation that the Governing Board support the project be added to the March

Water Policy/TAC agenda. G. Crudgington stated that the watershed group has scheduled a meeting with environmental groups to discuss the project and ask for their support.

- East SGV
- ULAR

D. Dolphin updated the group on the progress of getting the ULAR CIMP MOA signed.

E. Wolf described another potential MOA between the SGVCOG and members of the ULAR for contract management and Request for Proposal for design of load reduction strategies on the Rio Hondo River.

**10. Water Boards Update**

- Election of New Chair

Madelyn Glickfeld has been appointed the new chair of the LA Water Board.

R. Tahir announced that the 303(d) list was approved by the State Board and is awaiting approval by the EPA.

- Regulation Prohibiting Wasteful Water Use

The State Water Board considered this item at its Feb 20<sup>th</sup> meeting but took no action. The proposed regulation is opposed by ACWA on the grounds that it infringes on local control. The State Board has opened a public comment period.

**11. Water Supply Update**

K. Gardner gave an update on the status of the Main San Gabriel Basin. The level of the basin has risen slightly due to imported water and releases from the canyon.

- Upper District Surcharge on Water Augmentation Fee

T. Love clarified that due to decreased water sales to member agencies relative to those estimated in its budget, the surcharge is not a windfall, it just makes up for the routine water sales that did not occur last fiscal year. The annual surcharge helps finance Upper District's overhead and administrative costs. Releases to the Basin should not be viewed as a windfall; rather, this is somewhat routine and have no bearing on the annual surcharge. Upper District reassesses the surcharge each year, so there may be opportunity in the future to change the amount.

- Cal Water Fix

T. Love reported on actions by MWD. They are considering whether to shoulder the full cost of one (or two) tunnels. They believe that the currently approved environmental documents cover either case and there is no need to redo environmental work.

**12. Litigation Update**

- Gardena and Duarte cases

R. Tahir reported that the Duarte hearing has been set for March 26<sup>th</sup>. The Gardena case will be heard on April 2<sup>nd</sup>.

- San Diego Unfunded Mandates

D. Mahmud believes that the State Supreme Court is unlikely to accept an appeal of the lower court's decision.

- WOTUS

The U.S. Supreme Court rejected the 6<sup>th</sup> Circuit Court's claim that all cases should be consolidated at that court. This decision sends the multiple cases back to the various appeals courts throughout the county, opening up the possibility of inconsistent and overlapping rulings. Anticipating this possibility, the Trump EPA proactively pushed off for two years, the date for implementing the 2015 Obama Clean Water Rule.

**13. Stormwater Outreach Updates**

There was no outreach to report.

**EXECUTIVE DIRECTOR'S COMMENTS**

**CHAIR'S REPORT**

**ANNOUNCEMENTS**

**ADJOURN**

The meeting adjourned at 12:05 p.m.





**SGVCOG Special Joint Water Policy Committee/TAC Unapproved Minutes**

Date: March 21, 2018  
Time: 10:00 AM  
Location: Upper San Gabriel Valley Municipal Water District  
602 E. Huntington Drive, Monrovia, CA

**PRELIMINARY BUSINESS**

1. Call to Order: The meeting was called to order at 10:04 A.M.
2. Roll Call

**Water Policy Committee Members Present**

M. Clark, Rosemead  
J. Capoccia, Sierra Madre  
D. Mahmud, South Pasadena

**Water Policy Committee Members Absent**

Claremont  
Diamond Bar  
Glendora  
Monrovia  
West Covina

**Water TAC Members Present**

D. Dolphin, Alhambra  
V. Hevener, Arcadia  
K. Kearney, Bradbury  
S. Costandi, Covina  
A. Tachiki, O. Chi, Monrovia  
J. Carlson, Sierra Madre  
A. Lasso, G. LACDPW  
T. Love, P. Cortez, USGVMWD

**Water TAC Members Absent**

South Pasadena  
SGVMWD

**Ex Officio Members Present**

S. Green, LACSD

**Ex Officio Members Absent**

Watermaster

**Guests**

J. Carver, M. Cansino, Pomona  
MA Lutz, public  
K. Howie, Three Valleys MWD  
W. La, SGMRC

D. Correy, V. Murphy, Sen Portantino  
R. Tahir, TECs  
B. Faustinos, Nature for All

**SGVCOG Staff**

E. Wolf

3. Public Comment. R. Tahir read comments and entered them into the record. His comments include:
  - The State Audit report noted that the Rio Hondo/San Gabriel River EWMP overestimated by a factor of 10, the amount of runoff that was needed to be infiltrated

in order to meet the metals TMDL. The Regional Board caught this error.

- His belief that a similar mistake has been made by the Upper LA River EWMP.
- His belief that the high-flow suspension exemption should have been applied last year to meet the allowable number of exceedance days under the TMDL.
- His belief that an EIR should have been done to determine what impact reduced flow would have on down-stream environments.

## **CONSENT CALENDAR**

4. Water Committee/TAC Meeting Minutes – 2/21/2018  
There was not a quorum of Water Committee members. This item will be carried forward to next month's agenda.

## **PRESENTATION**

### **ACTION ITEMS**

5. Support for Rio Hondo/San Gabriel River E/WMP Modifications  
Oliver Chi, Monrovia City Manager, gave an overview of the proposed changes to the Rio Hondo/San Gabriel River E/WMP, including the methodology and reasoning underpinning the changes. These changes will be submitted to the Regional Board for approval as part of the E/WMP's adaptive management plan. The changes include the initial sequencing of five regional projects, designed to accomplish the majority of the E/WMP's water quality objectives. Other distributed projects, such as green streets, may ultimately not be required. The group is making the case that a one-day or one-event storm is not a good basis for establishing a watershed management plan. Instead, a yearly estimate is needed. The group has been working with the Regional Board and NGOs in order to gain support and is requesting that the SGVCOG submit a letter of support. Since there was not a quorum, a vote was not taken and this item will be brought back for Water Committee consideration in April before the issue comes before the Governing Board later that month. D. Mahmud noted that she will not be able to attend the April meeting but wanted it noted that she supports the proposed E/WMP changes.
6. SB 623 (Monning)  
Since there was not a quorum, this item was not addressed and instead, will be brought back in April for consideration.

## **DISCUSSION ITEMS**

7. Safe, Clean Water Program Elements  
E. Wolf provided an overview of the subcommittee discussions and program elements as they have matured since the last Water Policy meeting. The Chair then led members in discussion of several of the elements.
  - Governance. Referring to the proposed watershed management group map, D. Mahmud reviewed the reasons why she believes the Upper LA River group should be divided into a San Fernando Valley-based group and an Arroyo Seco-based group. Members expressed concern that a particular city not be separated into two different watershed regions. Ms. Mahmud said that should not be the case, unless a city is subject to the jurisdiction of more than one Regional Board. The committee reviewed the project selection flow chart, watershed group membership slides, and Regional Coordination Committee slide.

Members noted that since the Technical Committee will be empowered to score projects as the first level of review, membership on this committee could be very important.

- Project Selection. Committee members reviewed the proposed numeric scoring criteria.

D. Mahmud offered her ideas about adding additional scoring tiers and commented that receiving points for nature-based solutions in categories A and B, as well as possibly scoring points in category C, amounts to double and triple counting.

- Ballot Question. Members reviewed the draft ballot question and identified the difficulty the average voter might have in interpreting “impermeable surface.” They also discussed how this formula might lead to numerous requests for exemption. Next, the group discussed the County’s current thinking that the regional funds would be returned to the watersheds based on the amount that is raised within that watershed. D. Mahmud noted that this might hurt some higher density communities, where the amount of population is high, but the amount of tax revenue raised is lower relatively.

### **INFORMATION ITEMS**

**8.** Legislative Updates: SB 633 (Portantino), SB 1133 (Portantino), SB 1422 (Portantino), AB 2538 (Rubio), AB 1668 (Friedman), H.R. 465/2355

E. Wolf gave an update on pending legislation. There has been no change to SB 633, AB 1422, AB 1668, or H.R. 465/2355. SB 1133 has been updated as of March 19<sup>th</sup>. The bill language calls for some money raised by the proposed stormwater tax to go toward updating LA’s Basin Plan. AB 2538 has been amended to include some of the findings of the State Audit. The SGVCOG is continuing to work with the author to include language creating an ombudsman position at the Water Boards.

**9.** Regulatory Updates:

- State Audit. E. Wolf gave a brief overview of the findings and noted how these are being addressed in the legislation that we are sponsoring.

- Regulation Prohibiting Wasteful Water Use. There has been no update to this item at that State Water Board.

**10.** E/WMP Updates. Due to time constraints, there was no discussion of this item.

- RH/SGR

- East SGV

- ULAR

**11.** Water Boards Update

- 303(d) list. Since the State Board has not responded to staff’s request for information on the progress of the 303(d) list, it was decided to ask one of our representatives for help in getting an update. Staff will work with Sen Portantino’s office.

Recommended Action: for information.

**12.** Water Supply Update

- Cal Water Fix. T. Love gave an update on MWDs considerations, including self-funding a two-tunnel option. The MWD board will consider this at its meeting on April 10<sup>th</sup>.

**13.** Litigation Update

- Gardena and Duarte cases. R. Tahir provided the update. The Duarte case will restart on March 26 and continue through the 29<sup>th</sup>. The trial will start again on April 1<sup>st</sup>, devoted to Gardena’s litigation.

**14.** Stormwater Outreach Updates. There was no update on this item.

### **EXECUTIVE DIRECTOR’S COMMENTS**

E. Wolf reminded members that the next meeting would be on the new date, the second Tuesday of April, April 10<sup>th</sup>.

**CHAIR'S REPORT**

**ANNOUNCEMENTS**

Stormwater, Health, Equity Regional Workshop: April 4, 2018

**ADJOURN**

The meeting adjourned at 12:10 p.m.

DATE: April 10, 2018  
TO: Water Policy/Technical Advisory Committee  
FROM: Marisa Creter, Executive Director  
RE: **SB 623 (MONNING)**

## **RECOMMENDED ACTION**

Recommend that the Governing Board oppose SB 623 (Monning) unless amended to remove the fee on public water systems.

## **BACKGROUND**

Although most of the state's residents receive drinking water that meets federal and state drinking water standards, many drinking water systems in the state consistently fail to provide safe drinking water to their customers. Lack of safe drinking water is a problem that disproportionately affects residents of California's disadvantaged communities. More than 300 drinking water systems in disadvantaged communities, serving approximately 200,000 people, are unable to provide safe drinking water. These systems include 30 schools and daycare centers that serve over 12,000 children.

Existing law declares that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This bill would establish the Safe and Affordable Drinking Water Fund in the State Treasury and would provide that moneys in the fund are continuously appropriated to the state board. SB 623 would require the State Water Resources Control Board (SWRCB) to administer the fund to secure access to safe drinking water for all Californians. According to the author, "SB 623 seeks to provide an ongoing funding stream to ensure that disadvantaged communities have access to clean, safe, affordable, drinking water."

## **SB 623 (MONNING)**

This bill creates the Safe and Affordable Drinking Water Fund, administered by the SWRCB, and imposes water, fertilizer and dairy fees to fund safe drinking water programs. Among other provisions, this bill:

1. Imposes a fee on each customer of a public water system until July 1, 2020, as follows:
  - \$0.95 per month for customers with water meters up to one inch or customers without water meters;
  - \$4 per month for customers with water meters greater than one and up to two inches;
  - \$6 per month for customers with water meters greater than two and up to four inches;
  - \$10 per month for customers with water meters greater than four inches;
  - Exempts specified low-income customers, fire flow, or nonpotable uses such as recycled water from the water fee;

- Requires a customer with multiple meters or connections at a single address to pay a single monthly fee based on the largest metered connection.
- 2. Imposes a \$0.005 per dollar of sale on all fertilizer materials.
- 3. Imposes a \$0.01355 per hundredweight of milk/dairy sales.
- 4. Establishes the Safe and Affordable Drinking Water Fund, and requires the revenues (minus any allowed administrative costs) of the water, fertilizer and dairy fee to be deposited in the fund and continuously appropriates moneys in the Fund to SWRCB.
- 5. Requires SWRCB to develop and annually update a map of aquifers at high risk of containing contaminants that exceed state and federal primary drinking water standards.
- 6. Prohibits SWRCB or regional water quality boards from enforcement actions against agricultural operations for exceeding nitrate groundwater objectives or other groundwater pollution standards if the operation demonstrates certain mitigation requirements are met, including the timely payment of the fertilizer or dairy fee.

## **DISCUSSION**

There are two elements in the crafting of this legislation that bear further understanding. First, in California, environmental laws are generally guided by the “polluter pays” principle, which refers to the principle that if pollution occurs, the person or organization that causes it should pay for the consequences and for avoiding it in future. While this bill requires the Agriculture and Dairy industries to pay towards clean-up through industry assessments, the total contribution of both are likely less than 20% of the total revenue raised by this bill. In exchange for the timely payment of this fee and other activities, those industries will receive SWRCB enforcement relief.

Second, this bill has moved through the legislative process—including unanimous support in the Senate Environmental Quality and Appropriations Committees, and near unanimous approval in the Assembly Environmental Safety and Toxic Materials and Appropriations Committees. But those committees took up the bill essentially as a placeholder, only containing the creation of the fund, the prohibition on enforcement, and intent to create fees on agriculture. The last set of amendments add the agriculture fees, but also added a fee on public water system customers, a mandate on local health officers, a required map of aquifers and a risk assessment, and the removal of funding eligibility for individual domestic well users.

As of last September, the bill was rereferred to the Assembly Committee on Rules for reevaluation due to the numerous amendments. It did not go any further, but the proposal contained in the bill has been included as a budget trailer item slated for vote in June. Because this is a state-wide fee, it will require a two-thirds vote at the legislature. If passed, the fee would become law and not require further consideration at the local level through the Proposition 218 process.

SB 623 is supported by environmental groups, environmental justice groups, farm workers, and some central valley municipalities. The bill is opposed by many water agencies and districts, including

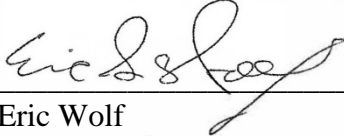
# REPORT


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Upper District, Three Valleys, and MWD, the California Chamber of Commerce, League of California Cities, and taxpayers' associations.

## **RECOMMENDED ACTION**

Oppose unless amended to remove the fee on public water systems.

Prepared by:   
Eric Wolf  
Senior Management Analyst

Approved by:   
Marisa Creter  
Executive Director

## **ATTACHMENT**

Attachment A – SB 623 (Monning)  
Attachment B – SB 623 Fact Sheet



AMENDED IN ASSEMBLY AUGUST 21, 2017

AMENDED IN ASSEMBLY JULY 3, 2017

AMENDED IN ASSEMBLY JUNE 26, 2017

AMENDED IN SENATE APRIL 26, 2017

AMENDED IN SENATE MARCH 30, 2017

**SENATE BILL**

**No. 623**

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**Introduced by Senator Monning**  
**(Principal coauthors: Senators De León and Hertzberg)**  
**(~~Coauthors: Senators Stone and Hernandez~~)**  
**(Coauthors: Senators Dodd, Hernandez, Stone, and Vidak)**  
*(Coauthor: Assembly Member Bloom)*

February 17, 2017

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An act to ~~amend Section 116395 of, and add Article 6.5 (commencing with Section 14615) to Chapter 5 of Division 7 of, to add Article 14.5 (commencing with Section 62215) to Chapter 2 of Part 3 of Division 21 of, and to repeal Sections 14616 and 62216 of, the Food and Agricultural Code, to add Chapter 4.6 (commencing with Section 116765) to Part 12 of Division 104-~~of, of~~ the Health and Safety Code, and to amend Section 13050 of, and to add Article 4.5 (commencing with Section 13278)-~~of to~~ Chapter 4 of Division 7 of, the Water Code, relating to water, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 623, as amended, Monning. Water quality: Safe and Affordable Drinking Water Fund.

(1) Existing law, the California Safe Drinking Water Act, requires the State Water Resources Control Board to administer provisions

relating to the regulation of drinking water to protect public health. Existing law establishes the Office of Sustainable Water Solutions within the State Water Resources Control Board with the purpose of promoting permanent and sustainable drinking water and wastewater treatment solutions to ensure the effective and efficient provision of safe, clean, affordable, and reliable drinking water and wastewater treatment services. Existing law declares it to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

This bill would establish the Safe and Affordable Drinking Water Fund in the State Treasury and would provide that moneys in the fund are continuously appropriated to the ~~office~~. *state board*. The bill would require the board to administer the fund to ~~assist communities and individual domestic well users to address contaminants in drinking water that exceed safe drinking water standards, as specified.~~ *secure access to safe drinking water for all Californians, while also ensuring the long-term sustainability of drinking water service and infrastructure.* The bill would authorize the *state board* to provide for the deposit *into the fund* of federal ~~contributions and contributions,~~ voluntary contributions, gifts, grants, ~~or bequests.~~ *bequests, and settlements from parties responsible for contamination of drinking water supplies.* The bill would require the *state board* to expend moneys in the fund for grants, loans, contracts, or services to assist ~~those communities and individual domestic well owners that rely on contaminated drinking water to have access to~~ *eligible applicants with projects relating to the provision of safe and affordable drinking water consistent with a fund implementation plan adopted annually by the state board, as prescribed.* The bill would require the *state board* annually to prepare and make available a report of expenditures of the fund and to adopt annually, after a public hearing, an ~~assessment of funding needed to ensure all Californians have access to safe drinking water.~~ *assessment of funding need that estimates the anticipated funding needed for the next fiscal year to achieve the purposes of the fund.* The bill would require, by January 1, 2019, the *state board*, in consultation with local health officers and other relevant stakeholders, to make available a map of aquifers that are used or likely to be used as a source of drinking water that are at high risk of containing contaminants. For purposes of the map, the bill would require local health officers and other relevant local agencies to provide all results of, and data associated with, water

*quality testing performed by certified laboratories to the board, as specified. By imposing additional duties on local health officers and local agencies, the bill would impose a state-mandated local program. By creating a new continuously appropriated fund, this bill would make an appropriation.*

~~The bill would state the intent of the Legislature to subsequently amend the bill to seek specific funding from agricultural operations to assist in providing emergency, interim, and long-term assistance to community water systems and individual domestic well users whose wells are located in agricultural areas.~~

~~(2) The act provides for the operation of public water systems and imposes on the state board various duties and responsibilities for the regulation and control of drinking water in the state. The act generally does not apply to state small water systems, except that the act requires the board to adopt regulations specifying minimum requirements for operation of a state small water system, which are authorized to be less stringent than the requirements for public water systems, requires the enforcement of these requirements, and authorizes the reasonable costs of the local health officer to be recovered. The act, within 3 years after September 19, 1985, required the State Department of Public Health to, among other things, conduct training workshops to assist health officers in evaluation of small public water systems, as defined, for organic chemical contamination, and in sampling and testing procedures and required the local health officer, in consultation with the department, to conduct an evaluation of all small public water systems under their jurisdictions to determine the potential for contamination of groundwater sources by organic chemicals and to develop a sampling plan for each system within their jurisdiction. The act provided that these provisions were operative during any fiscal year only if the Legislature appropriated sufficient funds to pay for all state-mandated costs to be incurred by local agencies during that year due to these provisions.~~

~~This bill would require the state board, by January 1, 2019, to promulgate regulations to require state small water systems and individual domestic wells to test their water supply wells for contamination. The bill would require testing to be prioritized based on local water quality conditions and would require the state board to review these regulations at least every 5 years. The bill would exempt these provisions from the above-described inoperative provision.~~

(2) Existing law, the Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose, until July 1, 2020, a safe and affordable drinking water fee in specified amounts on each customer of a public water system, to be administered by the state board, in consultation with the California Department of Tax and Fee Administration, in accordance with the Fee Collection Procedures Law. The bill would exempt from the fee a customer that self-certifies under penalty of perjury the customer's satisfaction of specified criteria relating to income. By expanding the crime of perjury, the bill would impose a state-mandated local program. The bill would require, beginning July 1, 2020, the state board to annually determine the amounts of the safe and affordable drinking water fee not to exceed the amounts imposed until July 1, 2020, and not to exceed the anticipated funding need in the most recent assessment of funding need adopted by the state board pursuant to the Safe and Affordable Drinking Water Fund provisions, as prescribed. The bill would require the state board, by July 1, 2020, to adopt regulations, in consultation with the Public Utilities Commission, relating to an exemption from the fee for low-income households, as specified. The bill would require a public water system to collect the fee and to remit these moneys to the state board to be deposited into the Safe and Affordable Drinking Water Fund. The bill would authorize a public water system to apply to the state board to use an alternative method to calculate the fee. By expanding the application of the Fee Collection Procedures Law that imposes criminal penalties for various acts, this bill would impose a state-mandated local program.

(3) Existing law requires every person who manufactures or distributes fertilizing materials to be licensed by the Secretary of Food and Agriculture and to pay a license fee that does not exceed \$300. Existing law requires every lot, parcel, or package of fertilizing material to have a label attached to it, as required by the secretary. Existing law requires a licensee who sells or distributes bulk fertilizing materials to pay to the secretary an assessment not to exceed \$0.002 per dollar of sales for all sales of fertilizing materials, as prescribed, for the purposes of the administration and enforcement of provisions relating to fertilizing materials. In addition to that assessment, existing law authorizes the secretary to impose an assessment in an amount not to exceed \$0.001 per dollar of sales for all sales of fertilizing materials for the purpose

*of providing funding for research and education regarding the use of fertilizing materials. Existing law specifies that a violation of the fertilizing material laws or the regulations adopted pursuant to those laws is a misdemeanor.*

*This bill, until January 1, 2033, would require a licensee to pay to the secretary a fertilizer safe drinking water fee of \$0.005 per dollar of sale for all sales of fertilizing materials. The bill, on and after January 1, 2033, would reduce the fee to \$0.002 per dollar of sale and would authorize the secretary to reduce the fee as necessary to not exceed the anticipated funding need in the most recent assessment of funding need adopted by the board pursuant to the Safe and Affordable Drinking Water Fund provisions. The bill would require these moneys to be deposited into the Safe and Affordable Drinking Water Fund. The bill would authorize the secretary to adopt regulations relating to the administration and enforcement of these provisions. Because a violation of these provisions or regulations adopted pursuant to these provisions would be a crime, the bill would impose a state-mandated local program.*

*(4) Existing law regulates the production, handling, and marketing of milk and dairy products and requires every milk handler subject to that regulatory scheme to pay specified assessments and fees to the Secretary of Food and Agriculture to cover the costs of regulating milk. Existing law governing milk defines “handler” as any person who, either directly or indirectly, receives, purchases, or otherwise acquires ownership, possession, or control of market milk from a producer, a producer-handler, or another handler for the purpose of manufacture, processing, sale, or other handling. Existing law defines “market milk” as milk conforming to specified standards and “manufacturing milk” as milk that does not conform to the requirements of market milk. Existing law provides that a violation of that regulatory scheme or a regulation adopted pursuant to that regulatory scheme is a misdemeanor.*

*This bill would require, beginning January 1, 2020, until January 1, 2035, each handler subject to that regulatory scheme to deduct from payments made to producers for market and manufacturing milk the sum of \$0.01355 per hundredweight of milk as a dairy safe drinking water fee. On and after January 1, 2035, the bill would reduce the fee to \$0.00678 per hundredweight of milk and would authorize the secretary to reduce the fee as necessary to not exceed the anticipated funding need in the most recent assessment of funding need adopted by*

*the board pursuant to the Safe and Affordable Drinking Water Fund provisions. The bill would require these moneys to be deposited into the Safe and Affordable Drinking Water Fund. The bill would authorize the secretary to take specified enforcement actions and would require the secretary to adopt regulations for the administration and enforcement of these provisions. Because a violation of these provisions or regulations adopted pursuant to these provisions would be a crime, the bill would impose a state-mandated local program.*

(3)

(5) Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are the principal state agencies with authority over matters relating to water quality. The act requires the state board to formulate and adopt state policies for water quality control and requires the regional boards to adopt regional water quality control plans in compliance with the state policies. Under the act, the state board and the regional boards prescribe waste discharge requirements for the discharge of waste that could affect the quality of the waters of the state. The act requires, upon the order of a regional board, a person who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, to clean up the waste or abate the effects of the waste, or in the case of threatened pollution or nuisance, to take other remedial action.

This bill would prohibit the state board or a regional board, until January 1, 2028, from subjecting an agricultural operation, as defined, to specified enforcement for causing or contributing to an exceedance of a water quality objective for nitrate in groundwater or for causing or contributing to a condition of pollution or nuisance for nitrates in groundwater if that agricultural operation demonstrates that it has satisfied certain mitigation requirements, including, among other requirements, the timely payment of any applicable fee, assessment, or charge ~~the fertilizer safe drinking water fee or the dairy safe drinking water fee, as applicable,~~ into the fund. The bill would prohibit the state board or a regional board, beginning January 1, 2028, until January 1, 2033, from subjecting an agricultural operation to specified enforcement for creating or threatening to create a condition of pollution or nuisance for nitrate in groundwater if that agricultural operation demonstrates that it has satisfied the prescribed mitigation requirements. The bill

would require the state board, by January 1, 2027, to conduct a public review of regulatory and basin plan amendment implementation programs to evaluate progress toward achieving water quality objectives with respect to nitrates in groundwater and assess compliance with adopted timelines, monitoring requirements, and implementation of best practicable treatment or control.

*(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: yes. Fiscal committee: yes. State-mandated local program: ~~no~~<sup>yes</sup>.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 116395 of the Health and Safety Code~~
- 2     ~~is amended to read:~~
- 3     ~~116395. (a) The Legislature finds and declares all of the~~
- 4     ~~following:~~
- 5         ~~(1) The large water system testing program has discovered~~
- 6         ~~chemical contamination of the state's drinking water with~~
- 7         ~~increasing frequency.~~
- 8         ~~(2) A significant number of California residents rely on the~~
- 9         ~~state's small water systems and individual domestic wells to~~
- 10        ~~provide their water.~~
- 11        ~~(3) The small systems and individual domestic wells, because~~
- 12        ~~they tend to be located in outlying rural areas where pesticide use~~
- 13        ~~is prevalent, and because they draw their water from shallow~~
- 14        ~~aquifers, face a serious threat of contamination.~~
- 15        ~~(4) Unchecked water sources that may be contaminated pose a~~
- 16        ~~potentially serious threat to the health of the citizens of California,~~
- 17        ~~particularly those living in outlying rural areas.~~

1     ~~(5) It is in the interest of all Californians that a testing program~~  
2     ~~for small public water systems and individual domestic wells be~~  
3     ~~implemented and carried out as expeditiously as possible.~~

4     ~~(6) Section 106.3 of the Water Code declares that every~~  
5     ~~Californian has the right to sufficient clean, safe, affordable, and~~  
6     ~~accessible water adequate for human consumption, cooking, and~~  
7     ~~sanitary purposes.~~

8     ~~(7) To ensure that the right of every Californian to sufficient~~  
9     ~~clean, safe, affordable, and accessible water adequate for human~~  
10    ~~consumption, cooking, and sanitary purposes is met, it is in the~~  
11    ~~interest of the State of California to identify water quality threats~~  
12    ~~in the state's drinking water supply, to the extent feasible, whether~~  
13    ~~those supplies serve a public water system, state small water~~  
14    ~~system, or an individual domestic well.~~

15    ~~(b) (1) For purposes of this section, "small public water system"~~  
16    ~~means a system with 200 connections or less, and is one of the~~  
17    ~~following:~~

18    ~~(A) A community water system that serves at least 15 service~~  
19    ~~connections used by yearlong residents or regularly serves at least~~  
20    ~~25 yearlong residents.~~

21    ~~(B) A state small water system.~~

22    ~~(C) A noncommunity water system such as a school, labor camp,~~  
23    ~~institution, or place of employment, as designated by the state~~  
24    ~~board.~~

25    ~~(2) For the purposes of this section, "individual domestic well"~~  
26    ~~means a groundwater well used to supply water for the domestic~~  
27    ~~needs of an individual residence or systems of four or less service~~  
28    ~~connections.~~

29    ~~(e) The state board shall conduct training workshops to assist~~  
30    ~~health officers in evaluation of small public water systems for~~  
31    ~~organic chemical contamination, and in sampling and testing~~  
32    ~~procedures. The state board shall, at a minimum, provide health~~  
33    ~~officers with guidelines for evaluating systems and instructions~~  
34    ~~for sampling.~~

35    ~~(d) The state board shall develop a schedule for conduct of the~~  
36    ~~programs by the local health officers. The schedule shall establish~~  
37    ~~a program to address first those systems with the most serious~~  
38    ~~potential for contamination. The state board shall enter into~~  
39    ~~agreements with the local health agencies to conduct the necessary~~  
40    ~~work to be performed pursuant to the schedule. The department~~

1 shall begin the program no later than three months after September  
 2 19, 1985. All local health officers shall complete the evaluation,  
 3 sampling, testing, review of sampling results, and notification to  
 4 the public water systems within their jurisdiction in accordance  
 5 with the agreements entered into with the state board and within  
 6 the schedule established by the state board. All work required by  
 7 this subdivision shall be completed within three years after  
 8 September 19, 1985.

9 (e) By January 1, 2019, the state board shall promulgate  
 10 regulations to require state small water systems and individual  
 11 domestic wells to test their water supply wells for contamination.  
 12 The state board shall prioritize testing based on local water quality  
 13 conditions. The state board shall review these regulations at least  
 14 every five years.

15 (f) (1) Except as provided in paragraph (2), this section shall  
 16 be operative during any fiscal year only if the Legislature  
 17 appropriates sufficient funds to pay for all state-mandated costs  
 18 to be incurred by local agencies pursuant to this section during  
 19 that year.

20 (2) Subdivisions (a), (b), (c), and (f) shall not become  
 21 inoperative.

22 SECTION 1. Article 6.5 (commencing with Section 14615) is  
 23 added to Chapter 5 of Division 7 of the Food and Agricultural  
 24 Code, to read:

25  
 26 *Article 6.5. Fertilizer Safe Drinking Water Fee*

27  
 28 14615. (a) *It is the intent of the Legislature to require licensees*  
 29 *of bulk fertilizing materials, and to authorize licensees of packaged*  
 30 *fertilizing materials, to pass the fertilizer safe drinking water fee*  
 31 *on to the end user of the fertilizer.*

32 (b) *For purposes of this article, the following definitions apply:*

33 (1) *“Bulk fertilizing material” has the same meaning as applies*  
 34 *to “bulk material” in Section 14517.*

35 (2) *“Fertilizing material” has the same meaning as defined in*  
 36 *Section 14533.*

37 (3) *“Fund” means the Safe and Affordable Drinking Water*  
 38 *Fund established by Section 116767 of the Health and Safety Code.*

39 (4) *“Packaged” has the same meaning as defined in Section*  
 40 *14551.*

1 14616. (a) In addition to the assessments provided in Section  
2 14611, a licensee whose name appears on the label of bulk or  
3 packaged fertilizing materials shall pay to the secretary a fertilizer  
4 safe drinking water fee of five mills (\$0.005) per dollar of sales  
5 for all sales of fertilizing materials to be deposited into the fund.

6 (b) This section shall remain in effect only until January 1, 2033,  
7 and as of that date is repealed, unless a later enacted statute that  
8 is enacted before January 1, 2033, deletes or extends that date.

9 14616. (a) In addition to the assessments provided in Section  
10 14611, a licensee whose name appears on the label of bulk or  
11 packaged fertilizing materials shall pay to the secretary a fertilizer  
12 safe drinking water fee of two mills (\$0.002) per dollar of sales  
13 for all sales of fertilizing materials to be deposited into the fund.

14 (b) The secretary may reduce the fertilizer safe drinking water  
15 fee as necessary to not exceed the anticipated funding need in the  
16 most recent assessment of funding need adopted by the State Water  
17 Resources Control Board pursuant to subdivision (b) of Section  
18 116769 of the Health and Safety Code. By October 1 of each year,  
19 the secretary shall notify all licensees of the amount of the fertilizer  
20 safe drinking water fee to be assessed in the following calendar  
21 year.

22 (c) This section shall become operative on January 1, 2033.

23 14617. (a) (1) A licensee whose name appears on the label  
24 who sells or distributes bulk fertilizing materials shall charge an  
25 unlicensed purchaser the fertilizer safe drinking water fee as a  
26 charge that is separate from, and not included in, any other fee,  
27 charge, or other amount paid by the purchaser. This fee shall be  
28 included on the bill of sale as a separate line item.

29 (2) A licensee whose name appears on the label of packaged  
30 fertilizing materials may include the fertilizer safe drinking water  
31 fee as a charge that is separate from, and not included in, any  
32 other fee, charge, or other amount paid by the purchaser.

33 (b) The secretary may prescribe, adopt, and enforce regulations  
34 relating to the administration and enforcement of this article.

35 (c) The secretary may retain up to 2 percent of the moneys  
36 collected pursuant to this article for reasonable costs associated  
37 with the implementation and enforcement of this article.

38 SEC. 2. Article 14.5 (commencing with Section 62215) is added  
39 to Chapter 2 of Part 3 of Division 21 of the Food and Agricultural  
40 Code, to read:

1  
2           Article 14.5. Dairy Safe Drinking Water Fee  
3

4       62215. (a) *It is the intent of the Legislature that the dairy safe*  
5 *drinking water fee be paid for all milk purchased in the state,*  
6 *regardless of grade.*

7       (b) *For purposes of this article, the following definitions apply:*

8       (1) *“Fee” means the dairy safe drinking water fee.*

9       (2) *“Manufacturing milk” has the same meaning as defined in*  
10 *Section 32509.*

11       (3) *“Market milk” has the same meaning as defined in Section*  
12 *32510.*

13       (4) *“Milk” includes market milk and manufacturing milk.*

14       62216. (a) *Beginning January 1, 2020, each handler, including*  
15 *a producer-handler, subject to the provisions of a stabilization*  
16 *and marketing plan shall deduct the sum of \$0.01355 per*  
17 *hundredweight of milk from payments made to producers for milk,*  
18 *including the handler’s own production, as a dairy safe drinking*  
19 *water fee.*

20       (b) *The secretary shall adopt regulations necessary for the*  
21 *proper administration and enforcement of this section by January*  
22 *1, 2020.*

23       (c) *This section shall remain in effect only until January 1, 2035,*  
24 *and as of that date is repealed, unless a later enacted statute that*  
25 *is enacted before January 1, 2035, deletes or extends that date.*

26       62216. (a) *Each handler, including a producer-handler,*  
27 *subject to the provisions of a stabilization and marketing plan*  
28 *shall deduct the sum of \$0.00678 per hundredweight of milk from*  
29 *payments made to producers for milk, including the handler’s own*  
30 *production, as a dairy safe drinking water fee.*

31       (b) *The secretary may reduce the fee, and may adjust the fee*  
32 *reduction from time to time, as necessary to not exceed the*  
33 *anticipated funding need in the most recent assessment of funding*  
34 *need adopted by the State Water Resources Control Board pursuant*  
35 *to subdivision (b) of Section 116769 of the Health and Safety Code.*

36       (c) *The secretary shall adopt regulations necessary for the*  
37 *proper administration and enforcement of this section.*

38       (d) *This section shall become operative on January 1, 2035.*

1 62217. (a) A handler shall pay the dairy safe drinking water  
2 fee to the secretary on or before the 45th day following the last  
3 day of the month in which the milk was received.

4 (b) The secretary shall remit the moneys paid to him or her  
5 pursuant to this article to the State Water Resources Control Board  
6 for deposit into the Safe and Affordable Drinking Water Fund  
7 established by Section 116767 of the Health and Safety Code. The  
8 secretary may retain up to 2 percent of the total amount that is  
9 paid to the secretary for the purposes of covering administrative  
10 costs borne by the secretary for implementing this section.

11 (c) The secretary may require handlers, including cooperative  
12 associations acting as handlers, to make reports at any intervals  
13 and in any detail that he or she finds necessary for the accurate  
14 collection of the fee.

15 (d) For the purposes of enforcing this article, the secretary,  
16 through his or her duly authorized representatives and agents,  
17 shall have access to the records of every producer and handler.  
18 The secretary shall have at all times free and unimpeded access  
19 to any building, yard, warehouse, store, manufacturing facility,  
20 or transportation facility in which any milk or milk product is  
21 produced, bought, sold, stored, bottled, handled, or manufactured.

22 (e) Any books, papers, records, documents, or reports made to,  
23 acquired by, prepared by, or maintained by the secretary pursuant  
24 to this article that would disclose any information about finances,  
25 financial status, financial worth, composition, market share, or  
26 business operations of any producer or handler, excluding  
27 information that solely reflects transfers of production base and  
28 pool quota among producers, is confidential and shall not be  
29 disclosed to any person other than the person from whom the  
30 information was received, except pursuant to the final order of a  
31 court with jurisdiction, or as necessary for the proper  
32 determination of any proceeding before the secretary.

33 ~~SEC. 2.~~

34 SEC. 3. Chapter 4.6 (commencing with Section 116765) is  
35 added to Part 12 of Division 104 of the Health and Safety Code,  
36 to read:

1 CHAPTER 4.6. SAFE AND AFFORDABLE DRINKING WATER

2  
3 Article 1. Legislative Findings and Declarations

4  
5 116765. The Legislature finds and declares all of the following:

6 (a) Section 106.3 of the Water Code declares that it is the policy  
7 of the state that every human being has the right to safe, clean,  
8 affordable, and accessible water adequate for human consumption,  
9 cooking, and sanitary purposes.

10 (b) For all public water systems, the operation and maintenance  
11 costs to supply, treat, and distribute potable water that complies  
12 with federal and state drinking water standards on a routine and  
13 consistent basis may be significant.

14 (c) All public water systems are currently required to set,  
15 establish, and charge a schedule of rates and fees that are sufficient  
16 to recover the operation and maintenance costs required to supply,  
17 treat, and distribute potable water that complies with federal and  
18 state drinking water standards on a routine and consistent basis.

19 (d) Hundreds of public water systems in the state cannot charge  
20 rates and fees that are affordable and sufficient to recover the full  
21 operation and maintenance costs required to supply, treat, and  
22 distribute potable water that complies with federal and state  
23 drinking water standards on a routine and consistent basis due to  
24 a combination of low income levels of customers, high treatment  
25 costs for contaminated water sources, and a lack of economies of  
26 scale that result in high unit costs for water service. Many schools  
27 that serve as their own regulated public water systems and have  
28 contaminated water sources cannot afford the full operation and  
29 maintenance costs required to provide water that meets federal  
30 and state drinking water standards.

31 (e) Nearly all state or federal drinking water project funding  
32 sources prohibit the use of that funding for operation and  
33 maintenance costs, and as a result, those systems that cannot afford  
34 required operation and maintenance costs are unable to access  
35 funding for capital projects to meet federal and state drinking  
36 water standards.

37 (f) As a result, hundreds of thousands of Californians,  
38 particularly those living in small disadvantaged communities, may  
39 be exposed to unsafe drinking water in their homes and schools,

1 *which impacts human health, household costs, and community*  
 2 *economic development.*

3 *(g) A significant number of California residents rely on state*  
 4 *small water systems and domestic wells to provide their drinking*  
 5 *water.*

6 *(h) State small water systems and domestic wells are not*  
 7 *currently subject to any comprehensive federal or state*  
 8 *requirements for chemical water quality monitoring. Many local*  
 9 *agencies do not require any monitoring beyond what is required*  
 10 *by state law, and there are wide discrepancies among local*  
 11 *jurisdictions in well monitoring programs.*

12 *(i) The state small water systems and individual domestic wells*  
 13 *face a serious threat of contamination because they often draw*  
 14 *their water from shallow groundwater sources and have fewer or*  
 15 *no chemical monitoring requirements.*

16 *(j) To ensure that the right of every Californian to safe, clean,*  
 17 *affordable, and accessible water adequate for human consumption,*  
 18 *cooking, and sanitary purposes is protected, it is in the interest of*  
 19 *the State of California to identify where Californians are at high*  
 20 *risk of lacking reliable access to safe drinking water or are known*  
 21 *to lack reliable access to safe drinking water, whether they rely*  
 22 *on a public water system, state small water system, or domestic*  
 23 *well for their potable water supply.*

24 *(k) Long-term sustainability of drinking water infrastructure*  
 25 *and service provision is necessary to secure safe drinking water*  
 26 *for all Californians and therefore it is in the interest of the state*  
 27 *to discourage the proliferation of new, unsustainable public water*  
 28 *systems and state small water systems, to prevent waste, and to*  
 29 *encourage consolidation and service extension when feasible.*

30 *(l) It is in the interest of all Californians to establish a fund with*  
 31 *a stable source of revenue to provide financial support, particularly*  
 32 *for operation and maintenance, necessary to secure access to safe*  
 33 *drinking water for all Californians, while also ensuring the long*  
 34 *term sustainability of drinking water service and infrastructure.*

35  
 36 *Article 2. Definitions*

37  
 38 ~~116765.~~

39 116766. For the purposes of this chapter:

- 1 ~~(a) “Agricultural operations” has the same meaning as defined~~  
2 ~~in Section 13050 of the Water Code.~~
- 3 (a) *“Administrator” has the same meaning as defined in Section*  
4 *116686.*
- 5 (b) *“Board” means the State Water Resources Control Board.*
- 6 (c) *“Community water system” has the same meaning as defined*  
7 *in Section 116275.*
- 8 (d) *“Customer” has the same meaning as defined in Section*  
9 *10612 of the Water Code.*
- 10 ~~(d)~~
- 11 (e) *“Disadvantaged community” has the same meaning as*  
12 *defined in Section 116275.*
- 13 (f) *“Domestic well” means a groundwater well used to supply*  
14 *water for the domestic needs of an individual residence or water*  
15 *systems with no more than four service connections.*
- 16 ~~(e)~~
- 17 (g) *“Fund” means the Safe and Affordable Drinking Water Fund*  
18 *established pursuant to Section 116766. 116767.*
- 19 (h) *“Fund implementation plan” means the fund implementation*  
20 *plan adopted pursuant to Section 116769.*
- 21 ~~(f)~~
- 22 (i) *“Nontransient noncommunity water system” has the same*  
23 *meaning as defined in Section 116275.*
- 24 ~~(g)~~
- 25 (j) *“Public water system” has the same meaning as defined in*  
26 *Section 116275.*
- 27 ~~(h)~~
- 28 (k) *“Replacement water” includes, but is not limited to, bottled*  
29 *water, point-of-use, or point-of-entry treatment units.*
- 30 ~~(i) “Safe Drinking Water Plan” means the plan prepared pursuant~~  
31 ~~to Section 116355.~~
- 32 (l) *“Safe drinking water” has the same meaning as defined in*  
33 *Section 116681.*
- 34 (m) *“Service connection” has the same meaning as defined in*  
35 *Section 116275.*
- 36 (n) *“Small community water system” has the same meaning as*  
37 *defined in Section 116275.*
- 38 (o) *“State small water system” has the same meaning as defined*  
39 *in Section 116275.*

1            *Article 3. Safe and Affordable Drinking Water Fund*

2  
3        ~~116766.~~

4        *116767.* The Safe and Affordable Drinking Water Fund is  
5 hereby established in the State Treasury. Notwithstanding Section  
6 13340 of the Government Code, all moneys in the fund are  
7 continuously appropriated to ~~the Office of Sustainable Water~~  
8 ~~Solutions within~~ the board without regard to fiscal years, in  
9 accordance with this chapter. Moneys in the fund at the close of  
10 the fiscal year shall remain in the fund and shall not revert to the  
11 General Fund.

12        ~~116767.~~

13        *116768.* (a) The board shall administer the fund for the  
14 purposes of this chapter to provide a stable source of funding to  
15 ~~assist communities and individual domestic well users to address~~  
16 ~~contaminants in drinking water that exceed~~ *secure access to safe*  
17 *drinking water standards, the treatment of which would otherwise*  
18 ~~make the cost of water service unaffordable for all Californians,~~  
19 *while also ensuring the long-term sustainability of drinking water*  
20 *service and infrastructure.* The board shall prioritize the use of  
21 this funding to assist ~~low-income disadvantaged~~ communities and  
22 low-income individual domestic well users. ~~In addition, order to~~  
23 ~~maximize the use of other funding sources for capital construction~~  
24 ~~projects when available, the board shall prioritize the use of this~~  
25 ~~funding for costs other than those related to capital construction~~  
26 ~~costs. An costs, except for capital construction costs associated~~  
27 ~~with consolidation and service extension to reduce the ongoing~~  
28 ~~unit cost of service and to increase sustainability of drinking water~~  
29 ~~infrastructure and service delivery. Beginning January 1, 2019,~~  
30 ~~an expenditure from the fund shall be consistent with the annual~~  
31 ~~fund implementation plan developed pursuant to Section 116769.~~  
32 ~~On and after January 1, 2020, the total unencumbered amount in~~  
33 ~~the fund shall not exceed the board's total estimated need for~~  
34 ~~moneys in the fund over a two-year period.~~ *plan.*

35        (b) In accordance with subdivision (a), the board shall expend  
36 moneys in the fund for grants, loans, contracts, or services to assist  
37 ~~those communities and individual domestic well owners that rely~~  
38 ~~on contaminated drinking water to have access to safe and~~  
39 ~~affordable drinking water~~ *eligible applicants* with any of the  
40 following:

1 (1) The provision of replacement water, as needed, to ensure  
2 immediate protection of health and safety as a short-term solution.

3 (2) The development, implementation, and sustainability of  
4 long-term solutions, including, but not limited to, *technical*  
5 *assistance*, planning, construction, and operation and maintenance  
6 costs associated with replacing, blending, or treating contaminated  
7 ~~wells and drinking water sources~~, consolidating water systems,  
8 ~~systems, or extending drinking water services to other public water~~  
9 ~~systems, domestic wells, or state small water systems. Technical~~  
10 ~~assistance and planning costs may include, but are not limited to,~~  
11 ~~analyses to identify, and efforts to further, opportunities to reduce~~  
12 ~~the unit cost of providing drinking water through organizational~~  
13 ~~and operational efficiency improvements, system consolidation~~  
14 ~~and service extension, implementation of new technology, and~~  
15 ~~other options and approaches to reduce costs.~~

16 (3) ~~Identifying and providing outreach to Californians without~~  
17 ~~access to safe drinking water who are eligible to receive assistance~~  
18 ~~from the fund and providing outreach to them. fund.~~

19 (4) Testing the drinking water quality of ~~individual~~ domestic  
20 wells serving ~~low-income households~~: *households with an income*  
21 *equal to or less than 200 percent of the federal poverty level in*  
22 *high risk areas identified pursuant to Article 4 (commencing with*  
23 *Section 116770).*

24 (c) Eligible applicants for funding include *public water systems;*  
25 *public agencies, including, but not limited to, local educational*  
26 *agencies; nonprofit organizations, public utilities, organizations;*  
27 ~~federally recognized Indian tribes, tribes;~~ *state Indian tribes listed*  
28 *on the Native American Heritage Commission’s California tribal*  
29 ~~consultation list, Tribal Consultation List; administrators; and~~  
30 ~~groundwater sustainability agencies, and mutual water companies.~~  
31 *agencies.*

32 (d) *The board may expend moneys from the fund for reasonable*  
33 *costs associated with administration of the fund. Beginning July*  
34 *1, 2020, the board may expend up to no more than 5 percent of*  
35 *the annual expenditures from the fund for reasonable costs*  
36 *associated with administration of the fund.*

37 (e) The board may undertake any of the following actions to  
38 implement the fund:

39 (1) Provide for the deposit of any of the following available and  
40 necessary moneys into the fund:

1 (A) Federal contributions.

2 (B) Voluntary contributions, gifts, grants, or bequests.

3 (C) *Settlements from parties responsible for contamination of*  
4 *drinking water supplies.*

5 (2) Enter into agreements for contributions to the fund from the  
6 federal government, local or state agencies, and private  
7 corporations or nonprofit organizations.

8 (3) Provide for appropriate audit, accounting, and fiscal  
9 management services, plans, and reports relative to the fund.

10 (4) *Direct portions of the fund to a subset of eligible applicants*  
11 *as required or appropriate based on funding source and consistent*  
12 *with the annual fund implementation plan.*

13 ~~(4)~~

14 (5) Take additional incidental action as may be appropriate for  
15 adequate administration and operation of the fund.

16 (f) *In administering the fund, the board shall make reasonable*  
17 *efforts to ensure all of the following:*

18 (1) *That parties responsible for contamination of drinking water*  
19 *supplies affecting an eligible applicant can be directly or easily*  
20 *identified by the board to pay or reimburse costs associated with*  
21 *contamination.*

22 (2) *That funds are used to secure the long-term sustainability*  
23 *of drinking water service and infrastructure, including, but not*  
24 *limited to, requiring adequate technical, managerial, and financial*  
25 *capacity of eligible applicants as part of funding agreement*  
26 *outcomes. Funding shall be prioritized to implement consolidations*  
27 *and service extensions when feasible, and administrative and*  
28 *managerial contracts entered into pursuant to Section 116686*  
29 *where applicable. Funds shall not be used to delay, prevent, or*  
30 *avoid the consolidation or extension of service to public water*  
31 *systems where it is feasible and the least-cost alternative. The*  
32 *board may set appropriate requirements as a condition of funding,*  
33 *including, but not limited to, a system technical, managerial, or*  
34 *financial capacity audit, improvements to reduce costs and increase*  
35 *efficiencies, an evaluation of alternative treatment technologies,*  
36 *and a consolidation or service extension feasibility study. As a*  
37 *condition of funding, the board may require a domestic well with*  
38 *nitrate contamination where ongoing septic system failure may be*  
39 *causing or contributing to contamination of a drinking water*  
40 *source to conduct an investigation and project to address the septic*

1 system failure if adequate funding sources are identified and  
2 accessible.

3 (3) That funds are not used to subsidize large-scale nonpotable  
4 use, to the extent feasible.

5 (g) At least once every 10 years, the board shall conduct a public  
6 review and assessment of the Safe and Affordable Drinking Water  
7 Fund, including, but not limited to, the effectiveness of the fund,  
8 the appropriateness of fees deposited into the fund, and any actions  
9 needed to carry out the purposes of this chapter. The board shall  
10 post the information it gathers on its Internet Web site and shall  
11 submit the information to the Legislature in compliance with  
12 Section 9795 of the Government Code.

13 ~~116768. It is the intent of the Legislature to subsequently amend~~  
14 ~~this section to seek specific funding from agricultural operations~~  
15 ~~to assist in providing emergency, interim, and long-term assistance~~  
16 ~~to community water systems and individual domestic well users~~  
17 ~~whose wells have been impacted by nitrate contamination and~~  
18 ~~whose wells are located in agricultural areas.~~

19 ~~116769.~~

20 ~~116769. Annually, By July 1 of each year, the board shall do~~  
21 ~~all of the following:~~

22 (a) Prepare and make available a report of expenditures from  
23 the fund.

24 (b) Adopt, after a public hearing, an assessment of funding  
25 needed to ensure all Californians have access to safe drinking  
26 water. This annual assessment shall incorporate information  
27 contained in the Safe Drinking Water Plan and include a list of  
28 community water systems and nontransient noncommunity water  
29 systems without access to safe drinking water, as well as  
30 identification of small communities and rural populations not  
31 served by public water systems that do not have access to safe  
32 drinking water. need, based on available data, that includes all of  
33 the following:

34 (1) Identification of systems and populations potentially in need  
35 of assistance, including all of the following:

36 (A) A list of systems that consistently fail to provide an adequate  
37 supply of safe drinking water. The list shall include, but is not  
38 limited to, all of the following:

39 (i) Any public water system that consistently fails to provide an  
40 adequate supply of safe drinking water.

1 (ii) Any community water system that serves a disadvantaged  
2 community that must charge fees that exceed the affordability  
3 threshold established in the Clean Water State Revolving Fund  
4 Intended Use Plan in order to supply, treat, and distribute potable  
5 water that complies with federal and state drinking water  
6 standards.

7 (iii) Any state small water system that consistently fails to  
8 provide an adequate supply of safe drinking water.

9 (B) A list of programs that assist, or that will assist, households  
10 supplied by a domestic well that consistently fails to provide an  
11 adequate supply of safe drinking water. This list shall include the  
12 number and approximate location of households served by each  
13 program without identifying exact addresses or other personal  
14 information.

15 (C) A list of public water systems and state small water systems  
16 that may be at risk of failing to provide an adequate supply of safe  
17 drinking water.

18 (D) An estimate of the number of households that are served by  
19 domestic wells or state small water systems in high risk areas  
20 identified pursuant to Article 4 (commencing with Section 116770).  
21 The estimate shall identify approximate locations of households,  
22 without identifying exact addresses or other personal information,  
23 in order to identify potential target areas for outreach and  
24 assistance programs.

25 (2) An analysis of anticipated funding needed for known  
26 projects, services, or programs by eligible applicants, consistent  
27 with the fund implementation plan, including any funding needed  
28 for existing long-term funding commitments from the fund. The  
29 board shall identify and consider other existing funding sources  
30 able to support any projects, services, or programs identified,  
31 including, but not limited to, local funding capacity, state or federal  
32 funding sources for capital projects, funding from responsible  
33 parties, and specialized funding sources contributing to the fund.

34 (3) An estimate of the funding needed for the next fiscal year  
35 based on the amount available in the fund, anticipated funding  
36 needs, other existing funding sources, and other relevant data and  
37 information.

38 (c) (1) Adopt, after a public hearing, a fund implementation  
39 plan with priorities and guidelines for expenditures of the fund.  
40 The

1 (2) *The board shall work with a multistakeholder advisory group*  
 2 *that shall be open to participation by representatives of entities*  
 3 *paying into the fund, public water systems, technical assistance*  
 4 *providers, local agencies, ~~affected persons,~~ nongovernmental*  
 5 *organizations, residents served by community water systems in*  
 6 *disadvantaged communities, state small water systems, domestic*  
 7 *wells, and the public, to establish priorities for the plan.*

8 ~~(2) The fund implementation plan shall prioritize eligibility for~~  
 9 ~~expenditures of the fund based on the following:~~

10 ~~(A) A water system’s current or projected water rates needed~~  
 11 ~~to ensure safe drinking water exceed or will exceed 1.5 percent of~~  
 12 ~~the median household income for that water system and the water~~  
 13 ~~system qualifies as a disadvantaged community.~~

14 ~~(B) The costs for providing potable water for an individual~~  
 15 ~~domestic well exceed or will exceed 1.5 percent of the household’s~~  
 16 ~~income and the household’s income is less than 80 percent of the~~  
 17 ~~statewide household median income.~~

18  
 19 *Article 4. Information on High Risk Areas*  
 20

21 *116770. (a) (1) By January 1, 2019, the board, in consultation*  
 22 *with local health officers and other relevant stakeholders, shall*  
 23 *use available data to make available a map of aquifers that are at*  
 24 *high risk of containing contaminants and that exceed primary*  
 25 *federal and state drinking water standards that are used or likely*  
 26 *to be used as a source of drinking water for a state small water*  
 27 *system or a domestic well. The board shall update the map at least*  
 28 *annually based on any newly available data.*

29 *(2) The board shall make the map of high risk areas, as well as*  
 30 *the data used to make the map, publicly accessible on its Internet*  
 31 *Web site in a manner that does not identify exact addresses or*  
 32 *other personal information and that complies with the Information*  
 33 *Practices Act of 1977 (Chapter 1 (commencing with Section 1798)*  
 34 *of Title 1.8 of Part 4 of Division 3 of the Civil Code). The board*  
 35 *shall notify local health officers and county planning agencies of*  
 36 *high risk areas within their jurisdictions.*

37 *(b) (1) A local health officer or other relevant local agency*  
 38 *shall provide all results of, and data associated with, water quality*  
 39 *testing performed by certified laboratories for a state small water*  
 40 *system or domestic well that is in the possession of the local health*

1 officer or other relevant local agency in an electronic format to  
 2 the board by January 1, 2019.  
 3 (2) On and after January 1, 2019, a local health officer or other  
 4 relevant local agency shall require all results of, and data  
 5 associated with, water quality testing performed by a certified  
 6 laboratory for a state small water system or domestic well that is  
 7 submitted to the local health officer or other relevant local agency  
 8 to also be submitted directly to the board in electronic format.  
 9

10 Article 5. Safe and Affordable Drinking Water Fee

11  
 12 116771. (a) (1) Until July 1, 2020, there is hereby imposed  
 13 a safe and affordable drinking water fee on each person or entity  
 14 that purchases water from a public water system, as follows:

15 (A) For a customer with a water meter that is less than or equal  
 16 to one inch in size, the fee shall be ninety-five cents (\$0.95) per  
 17 month.

18 (B) For a customer with a water meter that is greater than one  
 19 inch and less than or equal to two inches in size, the fee shall be  
 20 four dollars (\$4) per month.

21 (C) For a customer with a water meter that is greater than two  
 22 inches and less than or equal to four inches in size, the fee shall  
 23 be six dollars (\$6) per month.

24 (D) For a customer with a water meter that is greater than four  
 25 inches in size, the fee shall be ten dollars (\$10) per month.

26 (E) For a customer without a water meter, the fee shall be  
 27 ninety-five cents (\$0.95) per month.

28 (2) A customer that self-certifies under penalty of perjury to the  
 29 public water system collecting the fee that he or she meets either  
 30 of the following criteria shall be exempt from the payment of the  
 31 fee:

32 (i) The customer's household income is equal to or less than  
 33 200 percent of the federal poverty level.

34 (ii) The customer operates a deed-restricted multifamily housing  
 35 development that is required to provide housing exclusively to  
 36 tenants with household incomes equal to or less than 200 percent  
 37 of the federal poverty level.

38 (3) (A) A customer that is already enrolled in a program offered  
 39 by a public water system that is designed specifically to reduce  
 40 the cost of water service incurred by customers who meet

1 established income guidelines is exempt from the payment of the  
2 fee.

3 (B) A connection or meter that is used exclusively for fire flow  
4 or uses nonpotable water, including, but not limited to, recycled  
5 water, is exempt from the fee.

6 (4) A customer that has multiple connections or meters serving  
7 a single address shall only pay a single monthly fee based on the  
8 customer's largest metered connection.

9 (b) (1) (A) Beginning July 1, 2020, each person or entity that  
10 purchases water from a public water system shall be assessed a  
11 fee according to a fee schedule established by the board for the  
12 purposes of the Safe and Affordable Drinking Water Fund.

13 (B) The fee schedule shall not exceed the amounts established  
14 in paragraph (1) of subdivision (a).

15 (C) The board shall review and revise the fee schedule each  
16 fiscal year as necessary to not exceed the anticipated funding need  
17 in the most recent assessment of funding need.

18 (D) The fee schedule shall establish that a customer that has  
19 multiple connections or meters serving a single address shall only  
20 pay a single monthly fee pursuant to this section, based on its  
21 largest metered connection.

22 (E) (i) The fee schedule shall exempt any connection or meter  
23 that is used exclusively for fire flow or utilizes nonpotable water,  
24 including, but not limited to, recycled water.

25 (ii) By July 1, 2020, the board, in consultation with the Public  
26 Utilities Commission, shall adopt regulations to exempt households  
27 with incomes equal to or less than 200 percent of the federal  
28 poverty level from the fee established in the fee schedule pursuant  
29 to this subdivision. The Public Utilities Commission shall provide  
30 consultation, as well as relevant data, from the California Alternate  
31 Rates for Energy or CARE program established pursuant to Section  
32 739.1 of the Public Utilities Code and from the water utility  
33 low-income rate payer assistance programs developed pursuant  
34 to Section 739.8 of the Public Utilities Code to the board to aid  
35 in development and implementation of the regulations for  
36 exemption pursuant to this clause.

37 (2) (A) Beginning July 1, 2022, the fee schedule shall be set at  
38 an amount that does not result in the total uncommitted amount  
39 in the fund exceeding two times the anticipated funding need in  
40 the most recent assessment of funding need.

1 (B) For purposes of this paragraph, “total uncommitted amount  
2 in the fund” does not include moneys in the fund from the fertilizer  
3 safe drinking water fee established by Article 6.5 (commencing  
4 with Section 14615) of Chapter 5 of Division 7 of the Food and  
5 Agricultural Code until January 1, 2033, and does not include  
6 moneys in the fund from the dairy safe drinking water fee  
7 established by Article 14.5 (commencing with Section 62215) of  
8 Chapter 2 of Part 3 of Division 21 of the Food and Agricultural  
9 Code until January 1, 2035.

10 (c) A public water system shall collect the fee from each of its  
11 customers and may retain an amount, as approved by the board,  
12 as reimbursement for the reasonable costs incurred by the public  
13 water system associated with the collection of the fee. For small  
14 community water systems, reasonable public water system  
15 administrative cost reimbursement shall not exceed five hundred  
16 dollars (\$500) or 2 percent of the total revenue collected,  
17 whichever is greater. For all other public water systems,  
18 reasonable public water system administrative cost reimbursement  
19 shall not exceed 1 percent of the total revenue from the fees  
20 collected. The public water system shall remit the remainder to  
21 the board on an annual schedule.

22 (d) The board may approve an exemption for a community water  
23 system and its customers from the requirements of this section if  
24 the board finds that the amount that would be required to be  
25 remitted to the board pursuant to this section would be de minimis.

26 (e) Notwithstanding any other provision of this article, a fee  
27 shall not be imposed pursuant to this article on a person or entity  
28 that is itself a public water system if that public water system is  
29 only purchasing water from a public water system to supply its  
30 own customers that are themselves being assessed the fee.

31 (f) All moneys remitted to the board under this article shall be  
32 deposited in the Safe and Affordable Drinking Water Fund. The  
33 moneys remitted to the board under this article shall not be  
34 available for appropriation or borrowed for use for any purpose  
35 not established in this chapter unless that use of the moneys  
36 receives an affirmative vote of two-thirds of the membership in  
37 each house of the Legislature.

38 116772. (a) A public water system may apply to the board to  
39 authorize the public water system to use an alternative method to  
40 calculate the amount owed by each customer for the charge

1 *imposed by Section 116771 by submitting an application, in a form*  
2 *prescribed by the board, that demonstrates both of the following:*

3 *(1) That the method required by statute, regulation, or fee*  
4 *schedule adopted by the board would be impractical for the public*  
5 *water system to collect.*

6 *(2) That the method proposed by the public water system would*  
7 *provide an approximately equivalent level of total revenue and is*  
8 *consistent with the fee restrictions in this article, including, but*  
9 *not limited to, amount maximums and exemptions.*

10 *(b) The board shall review any application submitted pursuant*  
11 *to subdivision (a) to determine whether the justifications*  
12 *demonstrated pursuant to paragraphs (1) and (2) of subparagraph*  
13 *(a) are valid. If the board denies the application, that denial shall*  
14 *be in writing and shall not be reviewable. If the board approves*  
15 *the application, the public water system may use the alternative*  
16 *method for an amount of time prescribed by the board, not to*  
17 *exceed five years.*

18 *(c) There is not a limit on the number of applications the board*  
19 *is authorized to approve pursuant to this section to establish or*  
20 *renew an alternative method of fee calculation.*

21 *116773. (a) The board, in consultation with the California*  
22 *Department of Tax and Fee Administration, shall administer and*  
23 *collect the fees imposed by this article in accordance with the Fee*  
24 *Collection Procedures Law (Part 30 (commencing with Section*  
25 *55001) of Division 2 of the Revenue and Taxation Code).*

26 *(b) For purposes of administration of the fee imposed by this*  
27 *article, the following references in the Fee Collection Procedures*  
28 *Law shall have the following meanings:*

29 *(1) "Board" or "State Board of Equalization" means the State*  
30 *Water Resources Control Board.*

31 *(2) "Fee" means the safe and affordable drinking water fee*  
32 *imposed pursuant to this article.*

33 *(3) "Feepayer" means a customer liable to pay the fee.*

34 *(c) The board, in consultation with the California Department*  
35 *of Tax and Fee Administration, may prescribe, adopt, and enforce*  
36 *regulations relating to the administration and enforcement of this*  
37 *article, including, but not limited to, collections, reporting, refunds,*  
38 *and appeals.*

39 *(d) The initial regulations adopted by the board to implement*  
40 *this article shall be adopted in accordance with Chapter 3.5*

1 *(commencing with Section 11340) of Part 1 of Division 3 of Title*  
2 *2 of the Government Code, and shall not rely on the statutory*  
3 *declaration of emergency in subdivision (e).*

4 *(e) Except as provided in subdivision (d), the regulations*  
5 *adopted pursuant to this section, any amendment to those*  
6 *regulations, or subsequent adjustments to the annual fees or*  
7 *adoption of fee schedule, shall be adopted by the board as*  
8 *emergency regulations in accordance with Chapter 3.5*  
9 *(commencing with Section 11340) of Part 1 of Division 3 of Title*  
10 *2 of the Government Code. The adoption of these regulations is*  
11 *an emergency and shall be considered by the Office of*  
12 *Administrative Law as necessary for the immediate preservation*  
13 *of the public peace, health, safety, and general welfare. Any*  
14 *emergency regulations adopted by the board, or adjustments to*  
15 *the annual fees made by the board pursuant to this section, shall*  
16 *remain in effect until revised by the board.*

17 ~~SEC. 3.~~

18 SEC. 4. Section 13050 of the Water Code is amended to read:  
19 13050. As used in this division:

20 (a) “State board” means the State Water Resources Control  
21 Board.

22 (b) “Regional board” means any California regional water  
23 quality control board for a region as specified in Section 13200.

24 (c) “Person” includes any city, county, district, the state, and  
25 the United States, to the extent authorized by federal law.

26 (d) “Waste” includes sewage and any and all other waste  
27 substances, liquid, solid, gaseous, or radioactive, associated with  
28 human habitation, or of human or animal origin, or from any  
29 producing, manufacturing, or processing operation, including waste  
30 placed within containers of whatever nature prior to, and for  
31 purposes of, disposal.

32 (e) “Waters of the state” means any surface water or  
33 groundwater, including saline waters, within the boundaries of the  
34 state.

35 (f) “Beneficial uses” of the waters of the state that may be  
36 protected against quality degradation include, but are not limited to,  
37 to, domestic, municipal, ~~agricultural~~ *agricultural*, and industrial  
38 supply; power generation; recreation; aesthetic enjoyment;  
39 navigation; and preservation and enhancement of fish, wildlife,  
40 and other aquatic resources or preserves.

1 (g) “Quality of the water” refers to chemical, physical,  
2 biological, bacteriological, radiological, and other properties and  
3 characteristics of water which affect its use.

4 (h) “Water quality objectives” means the limits or levels of  
5 water quality constituents or characteristics which are established  
6 for the reasonable protection of beneficial uses of water or the  
7 prevention of nuisance within a specific area.

8 (i) “Water quality control” means the regulation of any activity  
9 or factor which may affect the quality of the waters of the state  
10 and includes the prevention and correction of water pollution and  
11 nuisance.

12 (j) “Water quality control plan” consists of a designation or  
13 establishment for the waters within a specified area of all of the  
14 following:

15 (1) Beneficial uses to be protected.

16 (2) Water quality objectives.

17 (3) A program of implementation needed for achieving water  
18 quality objectives.

19 (k) “Contamination” means an impairment of the quality of the  
20 waters of the state by waste to a degree which creates a hazard to  
21 the public health through poisoning or through the spread of  
22 disease. “Contamination” includes any equivalent effect resulting  
23 from the disposal of waste, whether or not waters of the state are  
24 affected.

25 (l) (1) “Pollution” means an alteration of the quality of the  
26 waters of the state by waste to a degree which unreasonably affects  
27 either of the following:

28 (A) The waters for beneficial uses.

29 (B) Facilities which serve these beneficial uses.

30 (2) “Pollution” may include “contamination.”

31 (m) “Nuisance” means anything which meets all of the following  
32 requirements:

33 (1) Is injurious to health, or is indecent or offensive to the senses,  
34 or an obstruction to the free use of property, so as to interfere with  
35 the comfortable enjoyment of life or property.

36 (2) Affects at the same time an entire community or  
37 neighborhood, or any considerable number of persons, although  
38 the extent of the annoyance or damage inflicted upon individuals  
39 may be unequal.

1 (3) Occurs during, or as a result of, the treatment or disposal of  
2 wastes.

3 (n) “Recycled water” means water which, as a result of treatment  
4 of waste, is suitable for a direct beneficial use or a controlled use  
5 that would not otherwise occur and is therefor considered a  
6 valuable resource.

7 (o) “Citizen or domiciliary” of the state includes a foreign  
8 corporation having substantial business contacts in the state or  
9 which is subject to service of process in this state.

10 (p) (1) “Hazardous substance” means either of the following:

11 (A) For discharge to surface waters, any substance determined  
12 to be a hazardous substance pursuant to Section 311(b)(2) of the  
13 Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).

14 (B) For discharge to groundwater, any substance listed as a  
15 hazardous waste or hazardous material pursuant to Section 25140  
16 of the Health and Safety Code, without regard to whether the  
17 substance is intended to be used, reused, or discarded, except that  
18 “hazardous substance” does not include any substance excluded  
19 from Section 311(b)(2) of the Federal Water Pollution Control Act  
20 because it is within the scope of Section 311(a)(1) of that act.

21 (2) “Hazardous substance” does not include any of the  
22 following:

23 (A) Nontoxic, nonflammable, and noncorrosive stormwater  
24 runoff drained from underground vaults, chambers, or manholes  
25 into gutters or storm sewers.

26 (B) Any pesticide which is applied for agricultural purposes or  
27 is applied in accordance with a cooperative agreement authorized  
28 by Section 116180 of the Health and Safety Code, and is not  
29 discharged accidentally or for purposes of disposal, the application  
30 of which is in compliance with all applicable state and federal laws  
31 and regulations.

32 (C) Any discharge to surface water of a quantity less than a  
33 reportable quantity as determined by regulations issued pursuant  
34 to Section 311(b)(4) of the Federal Water Pollution Control Act.

35 (D) Any discharge to land which results, or probably will result,  
36 in a discharge to groundwater if the amount of the discharge to  
37 land is less than a reportable quantity, as determined by regulations  
38 adopted pursuant to Section 13271, for substances listed as  
39 hazardous pursuant to Section 25140 of the Health and Safety  
40 Code. No discharge shall be deemed a discharge of a reportable

1 quantity until regulations set a reportable quantity for the substance  
2 discharged.

3 (q) (1) “Mining waste” means all solid, semisolid, and liquid  
4 waste materials from the extraction, beneficiation, and processing  
5 of ores and minerals. Mining waste includes, but is not limited to,  
6 soil, waste rock, and overburden, as defined in Section 2732 of  
7 the Public Resources Code, and tailings, slag, and other processed  
8 waste materials, including cementitious materials that are managed  
9 at the cement manufacturing facility where the materials were  
10 generated.

11 (2) For the purposes of this subdivision, “cementitious material”  
12 means cement, cement kiln dust, clinker, and clinker dust.

13 (r) “Master recycling permit” means a permit issued to a supplier  
14 or a distributor, or both, of recycled water, that includes waste  
15 discharge requirements prescribed pursuant to Section 13263 and  
16 water recycling requirements prescribed pursuant to Section  
17 13523.1.

18 (s) (1) “Agricultural operation” means either of the following:

19 (A) A discharger that satisfies both of the following conditions:

20 (i) The discharger is an owner, operator, or both, of land that is  
21 irrigated to produce crops or pasture for commercial purposes or  
22 a nursery.

23 (ii) The discharger is enrolled or named in an irrigated lands  
24 regulatory program order adopted by the state board or a regional  
25 board pursuant to Section 13263 or 13269.

26 (B) A discharger that satisfies both of the following conditions:

27 (i) The discharger is an owner, operator, or both of a facility  
28 that is used for the raising or harvesting of livestock.

29 (ii) The discharger is enrolled or named in an order adopted by  
30 the state board or a regional board pursuant to Section 13263 or  
31 13269 that regulates the discharges of waste from a facility  
32 identified in clause (i) to protect ground and surface water.

33 (2) “Agricultural operation” does not include any of the  
34 following:

35 (A) An off-farm facility that processes crops or livestock.

36 (B) An off-farm facility that manufactures, synthesizes, stores,  
37 or processes fertilizer.

38 (C) Any portions of land or activities occurring on those portions  
39 of land that are not covered by an order adopted by the state board

1 or a regional board identified in clause (ii) of subparagraph (A) or  
2 clause (ii) of subparagraph (B) of paragraph (1).

3 ~~SEC. 4.~~

4 *SEC. 5.* Article 4.5 (commencing with Section 13278) is added  
5 to Chapter 4 of Division 7 of the Water Code, to read:

6  
7 Article 4.5. Discharges of Nitrate to Groundwater from  
8 Agricultural Operations  
9

10 13278. (a) For the purposes of this article, the Legislature finds  
11 all of the following:

12 (1) Implementation of currently known best management  
13 practices for some crops can reduce but not always completely  
14 prevent nitrogen in organic and synthetic fertilizers that transform  
15 to nitrates from reaching groundwater at concentrations above the  
16 water quality objectives established pursuant to this division.

17 (2) It is acknowledged that discharges of nitrate from agricultural  
18 operations could reach groundwater and could cause or contribute  
19 to exceedances of drinking water standards for ~~nitrate~~, and *nitrate*,  
20 and could cause conditions of pollution of or nuisance in those  
21 waters as defined and applied in accordance with this division, or  
22 both.

23 (3) Nitrate contamination of groundwater impacts drinking water  
24 sources for hundreds of thousands of Californians and it is  
25 necessary to protect current and future drinking water users from  
26 the impacts of nitrate contamination.

27 (4) Despite progress in controlling discharges of nitrogen that  
28 lead to nitrate formation, some groundwater sources of drinking  
29 water will continue to be adversely impacted by nitrates and it is  
30 important to have in place a program for mitigating these impacts.

31 (5) The regional boards will continue to regulate discharges to  
32 reduce nitrogen loading and protect beneficial uses of water and  
33 groundwater basins; the state board, regional boards, and courts  
34 will ensure compliance with those orders; and dischargers will pay  
35 for mitigation of pollution by funding replacement water for  
36 affected communities.

37 (b) The Legislature declares its intent in establishing this article  
38 ~~to do both of the following:~~

39 ~~(1) To subsequently amend this article to establish an~~  
40 ~~agricultural assessment to be paid by agricultural operations for a~~

1 period of 15 years to provide funding, as a portion of the Safe and  
 2 Affordable Drinking Water Fund, to make available alternative  
 3 supplies of safe drinking water to persons affected by discharges  
 4 of nitrogen from agricultural operations that may occur in amounts  
 5 that may cause or contribute to an exceedance of a water quality  
 6 objective or cause conditions of pollution or nuisance.

7 ~~(2) To limit~~ to limit enforcement actions that a regional board  
 8 or the state board could otherwise initiate during that 15-year period  
 9 against an agricultural operation paying the agricultural assessment,  
 10 while maintaining the overall framework of this division to protect  
 11 beneficial uses, implement water quality objectives in waters of  
 12 the state, and regulate activities and factors that affect water quality  
 13 to attain the highest water quality that is reasonable.

14 13278.1. (a) An agricultural operation shall not be subject to  
 15 enforcement undertaken or initiated by the state board or a regional  
 16 board under Chapter 5 (commencing with Section 13330) for  
 17 causing or contributing to an exceedance of a water quality  
 18 objective for nitrate in groundwater or for causing or contributing  
 19 to a condition of pollution or nuisance for nitrates in groundwater  
 20 if an agricultural operation that discharges or threatens to discharge,  
 21 or has discharged or previously threatened to discharge, nitrate to  
 22 groundwater demonstrates that it has satisfied all of the following  
 23 mitigation requirements:

24 (1) The agricultural operation has timely paid any applicable  
 25 fee, ~~assessment, or charge~~ *fertilizer safe drinking water fee*  
 26 *established by Article 6.5 (commencing with Section 14615) of*  
 27 *Chapter 5 of Division 7 of the Food and Agricultural Code or*  
 28 *dairy safe drinking water fee established by Article 14.5*  
 29 *(commencing with Section 62215) of Chapter 2 of Part 3 of*  
 30 *Division 21 of the Food and Agricultural Code* into the Safe and  
 31 Affordable Drinking Water Fund ~~or an applicable agricultural~~  
 32 ~~assessment is providing funding into the Safe and Affordable~~  
 33 ~~Drinking Water Fund.~~ *established by Section 116767 of the Health*  
 34 *and Safety Code.* For the purposes of this paragraph, “timely paid”  
 35 means that an agricultural operation has paid all applicable fees,  
 36 assessments, or charges, no later than 90 days after their respective  
 37 due dates, since the application of the fee, assessment, or charge  
 38 to the agricultural operation.

39 (2) Except as provided in subdivision (b), the agricultural  
 40 operation is in compliance with all applicable provisions prescribed

1 by a regional board or the state board in an order adopted pursuant  
2 to Section 13263 or 13269, including, but not limited to, the  
3 following:

4 (A) Requirements to implement best practicable treatment or  
5 control.

6 (B) Best efforts, monitoring, and reporting requirements.

7 (C) Timelines.

8 (3) The agricultural operation is in compliance with an  
9 applicable program of implementation for achieving groundwater  
10 quality objectives for nitrate that is part of an applicable water  
11 quality control plan adopted by the state board or a regional board  
12 pursuant to Article 3 (commencing with Section 13240).

13 (b) (1) The mitigation requirement contained in paragraph (2)  
14 of subdivision (a) does not include any generalized prohibition  
15 contained in an order adopted under Section 13263 or 13269 on  
16 causing or contributing, or threatening to cause or contribute, to  
17 an exceedance of a water quality objective for nitrate in  
18 groundwater or a condition of pollution or nuisance for nitrate in  
19 groundwater.

20 (2) (A) An agricultural operation is not in compliance with the  
21 mitigation requirement in paragraph (2) of subdivision (a) if the  
22 agricultural operation has been subject to an enforcement action  
23 under Chapter 5 (commencing with Section 13330) within the  
24 preceding 12 months for any violation of an order adopted under  
25 Section 13263 or 13269 authorizing discharges from agricultural  
26 operations.

27 (B) Subparagraph (A) does not apply to an enforcement action  
28 commenced after January 1, 2016, and before January 1, 2018,  
29 inclusive, alleging that a discharge from an agricultural operation  
30 caused or contributed, or threatened to cause or contribute, to an  
31 exceedance of a water quality objective for nitrate in groundwater,  
32 conditions of pollution or nuisance for nitrate in groundwater, or  
33 both.

34 (3) An agricultural operation does not qualify for the  
35 enforcement exemption set forth in this subdivision if the operation  
36 fails to continue to make applicable payments into the Safe and  
37 Affordable Drinking Water Fund to the extent that the agricultural  
38 operation maintains a continuance of farming operation.

1 (c) Both of the following apply to a discharge of nitrogen by an  
2 agricultural operation that occurs when the discharger is in full  
3 compliance with the mitigation requirements:

4 (1) The discharge shall not be admissible in a future enforcement  
5 action against the agricultural operation by the state board or a  
6 regional board pursuant to Chapter 5 (commencing with Section  
7 13300) to support a claim that the agricultural operation is causing  
8 or contributing, or threatening to cause or contribute, to an  
9 exceedance of a water quality objective for nitrate in groundwater  
10 or a condition of pollution or nuisance for nitrate in groundwater.

11 (2) The discharge shall not be considered by the state board or  
12 a regional board to apportion responsibility and shall not be used  
13 by any person to diminish responsibility in any enforcement action  
14 initiated pursuant to Chapter 5 (commencing with Section 13300)  
15 with respect to discharges of nitrogen, regardless of source, that  
16 did not occur in compliance with the mitigation requirements.

17 (d) Nothing in this section alters the state board's or a regional  
18 board's authority to require or conduct investigations, to require  
19 reports on or to establish other requirements for best practicable  
20 treatment or control, or to require monitoring and reporting  
21 requirements to protect water quality.

22 (e) This section shall not be deemed to change or alter a water  
23 quality objective that is part of a water quality control plan adopted  
24 by the state board or a regional board pursuant to Article 3  
25 (commencing with Section 13240).

26 (f) This section shall remain in effect only until January 1, 2028,  
27 and as of that date is repealed.

28 13278.2. (a) An agricultural operation shall not be subject to  
29 enforcement undertaken or initiated by the state board or a regional  
30 board under Section 13304 for creating or threatening to create a  
31 condition of pollution or nuisance for nitrates in groundwater if  
32 an agricultural operation that discharges or threatens to discharge,  
33 or has discharged or previously threatened to discharge, nitrate to  
34 groundwater demonstrates that it has satisfied all of the following  
35 mitigation requirements:

36 (1) The agricultural operation has timely paid any applicable  
37 ~~fee, assessment, or charge~~ *fertilizer safe drinking water fee*  
38 *established by Article 6.5 (commencing with Section 14615) of*  
39 *Chapter 5 of Division 7 of the Food and Agricultural Code or*  
40 *dairy safe drinking water fee established by Article 14.5*

1 (*commencing with Section 62215*) of Chapter 2 of Part 3 of  
2 Division 21 of the Food and Agricultural Code into the Safe and  
3 Affordable Drinking Water Fund ~~or an applicable agricultural~~  
4 ~~assessment is providing funding into the Safe and Affordable~~  
5 ~~Drinking Water Fund.~~ *established by Section 116767 of the Health*  
6 *and Safety Code.* For the purposes of this paragraph, “timely paid”  
7 means that an agricultural operation has paid all applicable fees,  
8 assessments, or charges, no later than 90 days after their respective  
9 due dates, since the application of the fee, assessment, or charge  
10 to the agricultural operation.

11 (2) Except as provided in subdivision (b), the agricultural  
12 operation is in compliance with all applicable provisions prescribed  
13 by a regional board or the state board in an order adopted pursuant  
14 to Section 13263 or 13269, including, but not limited to, the  
15 following:

16 (A) Requirements to implement best practicable treatment or  
17 control.

18 (B) Best efforts, monitoring, and reporting requirements.

19 (C) Timelines.

20 (3) The agricultural operation is in compliance with an  
21 applicable program of implementation for achieving groundwater  
22 quality objectives for nitrate that is part of an applicable water  
23 quality control plan adopted by the state board or a regional board  
24 pursuant to Article 3 (*commencing with Section 13240*).

25 (b) (1) The mitigation requirement contained in paragraph (2)  
26 of subdivision (a) does not include any generalized prohibition  
27 contained in an order adopted under Section 13263 or 13269 on  
28 causing or contributing, or threatening to cause or contribute, to  
29 an exceedance of a water quality objective for nitrate in  
30 groundwater or a condition of pollution or nuisance for nitrate in  
31 groundwater.

32 (2) An agricultural operation is not in compliance with the  
33 mitigation requirement in paragraph (2) of subdivision (a) if the  
34 agricultural operation has been subject to an enforcement action  
35 under Chapter 5 (*commencing with Section 13330*) within the  
36 preceding 12 months for any violation of an order adopted under  
37 Section 13263 or 13269 authorizing discharges from agricultural  
38 operations.

39 (3) An agricultural operation does not qualify for the  
40 enforcement exemption set forth in this subdivision if the operation

1 fails to continue to make applicable payments into the Safe and  
2 Affordable Drinking Water Fund to the extent that the agricultural  
3 operation maintains a continuance of farming operation.

4 (c) Both of the following apply to a discharge of nitrogen by an  
5 agricultural operation that occurs when the discharger is in full  
6 compliance with the mitigation requirements:

7 (1) The discharge shall not be admissible in a future enforcement  
8 action against the agricultural operation by the state board or a  
9 regional board pursuant to Chapter 5 (commencing with Section  
10 13300) to support a claim that the agricultural operation is causing  
11 or contributing, or threatening to cause or contribute, to an  
12 exceedance of a water quality objective for nitrate in groundwater  
13 or a condition of pollution or nuisance for nitrate in groundwater.

14 (2) The discharge shall not be considered by the state board or  
15 a regional board to apportion responsibility and shall not be used  
16 by any person to diminish responsibility in any enforcement action  
17 initiated pursuant to Chapter 5 (commencing with Section 13300)  
18 with respect to discharges of nitrogen, regardless of source, that  
19 did not occur in compliance with the mitigation requirements.

20 (d) Nothing in this section alters the state board's or a regional  
21 board's authority to require or conduct investigations, to require  
22 reports on or to establish other requirements for best practicable  
23 treatment or control, or to require monitoring and reporting  
24 requirements to protect water quality.

25 (e) This section shall not be deemed to change or alter a water  
26 quality objective that is part of a water quality control plan adopted  
27 by the state board or a regional board pursuant to Article 3  
28 (commencing with Section 13240).

29 (f) (1) This section shall become operative on January 1, 2028.

30 (2) This section shall remain in effect only until January 1, 2033,  
31 and as of that date is repealed, unless a later enacted statute that  
32 is enacted before January 1, 2033, deletes or extends that date.

33 13278.3. By January 1, 2027, the state board shall conduct a  
34 public review of regulatory and basin plan amendment  
35 implementation programs to evaluate progress toward achieving  
36 water quality objectives with respect to nitrates in groundwater  
37 and assess compliance with adopted timelines, monitoring  
38 requirements, and implementation of best practicable treatment or  
39 control.

1 13278.4. Nothing in this article limits the liability of a  
2 discharger under any other law, including, but not limited to, Part  
3 3 (commencing with Section 3479) of Division 4 of the Civil Code.  
4 *SEC. 6. No reimbursement is required by this act pursuant to*  
5 *Section 6 of Article XIII B of the California Constitution for certain*  
6 *costs that may be incurred by a local agency or school district*  
7 *because, in that regard, this act creates a new crime or infraction,*  
8 *eliminates a crime or infraction, or changes the penalty for a crime*  
9 *or infraction, within the meaning of Section 17556 of the*  
10 *Government Code, or changes the definition of a crime within the*  
11 *meaning of Section 6 of Article XIII B of the California*  
12 *Constitution.*  
13 *However, if the Commission on State Mandates determines that*  
14 *this act contains other costs mandated by the state, reimbursement*  
15 *to local agencies and school districts for those costs shall be made*  
16 *pursuant to Part 7 (commencing with Section 17500) of Division*  
17 *4 of Title 2 of the Government Code.*

O

**FACT SHEET: SB 623**  
**SENATOR WILLIAM MONNING**  
**SAFE AND AFFORDABLE DRINKING WATER**

**PROPOSED BILL**

---

SB 623 will establish the Safe and Affordable Drinking Water Fund to provide an ongoing source of funding to ensure all Californians have access to safe drinking water.

**BACKGROUND**

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Recent California State Water Resources Control Board (SWB) data identified roughly 300 California public water systems serving communities currently out of compliance with drinking water standards, some of which have been unable to provide safe drinking water for multiple years. Drinking water advocates estimate over 1 million Californians are exposed to unsafe drinking water each year. Additionally, nearly 2 million Californians utilize domestic wells and/or state small water systems that are not eligible for most assistance programs, leaving them particularly vulnerable to unsafe drinking water. Drinking water contaminants are dangerous and can cause a variety of both short and long-term health effects, with children and the elderly typically at greatest risk.

For years, the SWB has called for the creation of a new sustainable funding source to support safe drinking water needs, since other sources of funding, such as bond funding or the Safe Drinking Water State Revolving Fund (SDWSRF) do not qualify to be used to support urgent needs like ongoing operations and maintenance costs for drinking water treatment. The lack of a sustainable funding source means

disadvantaged communities and others have no outside support to draw upon, forcing their typically small, rural and/or socioeconomically disadvantaged ratepayer bases to bear the entire cost of ongoing drinking water treatment.

**SOLUTION**

---

**Eligibility, Funding, Governance**

The Safe and Affordable Drinking Water Fund will be located at SWB in its Office of Sustainable Water Solutions, which is best situated to leverage other sources of existing or new funding. In addition, it will provide for coordination with the newly created multi-disciplinary technical assistance program focused entirely on the needs of small disadvantaged communities, so that it may efficiently and effectively secure safe drinking water to impacted communities and residents throughout the state.

The SWB, in consultation with a multi-disciplinary stakeholder group and after adoption of a fund implementation plan and needs assessment, shall prioritize funding to focus on disadvantaged communities and low-income domestic well users with exceedances of primary drinking water standards where the cost of treatment or new sources would otherwise make the cost of the water service unaffordable. The funds collected will also provide for costs where no other currently existing sources of funding available.

Funding shall come from a safe drinking water fee in the form of a fertilizer mill fee, a safe drinking water fee on dairies, and a new small safe drinking water fee assessed

monthly on water bills. The combined fees will raise an estimated total of \$140 million annually for the first two years, and thereafter can be kept consistent or reduced by the State Water Board based on its annual needs assessments. Fees cannot be adjusted to exceed the caps identified in statute. For single-family homes and most multi-family homes and businesses, the monthly safe drinking water fee is capped at a maximum of \$.95 cents, with an exemption from the fee for low-income households (under 200% of the federal poverty level).

### **Agricultural Certainty**

SB 623 will provide agricultural operations certainty from regional board and/or SWB-initiated enforcement actions for violations of nitrate water quality objectives and/or for causing conditions of pollution or nuisance for nitrates in groundwater for 10 years, and from regional board and/or SWB initiated clean up and abatement actions for an additional five years, as long as agricultural operations comply with specified conditions. These conditions include: compliance with all applicable provisions in an adopted waste discharge requirements order, or conditional waiver order, including implementing best practicable treatment or control, best efforts, monitoring and requirements, and other timelines, and is in compliance with an applicable program of implementation for achieving groundwater quality objectives for nitrate that are part of an applicable water quality control plan. The agricultural certainty provisions in the legislation sunset January 1, 2028 and January 1, 2033, respectively.

Nothing in this legislation limits the liability of a discharger under any other law, including the Civil Code, nor alters the SWB or a regional board's authority to require or conduct investigations, require reporting or monitoring to protect water quality, or

change or alter water quality objectives that are part of a water quality control plan.

### **SUPPORT**

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Agricultural Council of California  
Allensworth Community Services District  
Alliance of Child and Family Services  
Almond Alliance  
American Heart Association  
American Rivers  
American Stroke Association  
Armona Community Services District  
Arvin Community Services District  
American Stroke Association  
Asian Pacific Environmental Network  
Asociación de Gente Unida por el Agua  
Association of People United for Water  
Black Women for Wellness  
California Audubon  
California Bicycle Coalition  
California Citrus Mutual  
CA Environmental Justice Alliance  
California Food Policy Advocates  
California Fresh Fruit Association  
California Housing Partnership  
California Labor Federation  
CA League of Conservation Voters  
California Rice Commission  
CA Partnership for the San Joaquin Valley  
CA Rural Legal Assistance  
Foundation  
CA Pan-Ethnic Health Network  
California Strawberry Commission  
California Water Service  
Catholic Charities, Diocese of Stockton  
Central California Environmental Network  
Central California Environmental Justice  
Network  
Center for Race, Poverty, and the  
Environment  
Ceres  
Church Brothers Farms  
City of Arvin  
City of Hanford  
City of Huron

City of Porterville  
Clean Water Action  
Clif Bar  
Comite Civico del Valle  
Common Sense Kids Action  
Community Alliance for Agroecology  
Community Water Center  
Costa Farms  
Council for a Strong America  
County of Tulare  
Cultiva la Salud  
D'Arrigo Brothers of California  
Dolores Huerta Foundation  
Driscoll's  
EILEEN FISHER  
El Quinto Sol de America  
Environmental Defense Fund  
Esperanza Community Housing CA  
Faith in the Valley  
Farm Bureau Monterey  
Foxy Produce  
Fresh Farms, Inc.  
Fresh Foods, Inc.  
Fresno Building Healthy Communities  
Friends Committee on Legislation of CA  
Friends of Calwa  
Gap, Inc.  
Grower-Shopper Association of Central California  
Kaweah Basin Water Quality Association  
Kaweah Delta Water Conservation District  
Kern County Farm Bureau  
Kings County Farm Bureau  
Latino Coalition for a Healthy America  
Leadership Counsel for Justice and Accountability  
League of Women Voters  
Lutheran Office of Public Policy  
Merrill Farms  
Mission Readiness: Council for a Strong America  
Monterey Bay Independent Physician Association  
Monterey County Board of Supervisors  
Monterey County Farm Bureau  
Naturipe

NextGen California  
Nutrition & Fitness Collaborative of the Central Coast  
Pacific Institute  
Pacific Water Quality Association  
Pepsico  
Physicians for Social Responsibility Los Angeles  
Planning and Conservation League  
Policy Link  
Poplar Community Services District  
Public Health Advocates  
Public Interest Law Project  
Pueblo Unido CDC  
Rava Ranches  
Rio Farms  
Rural County Representatives of California  
Rural County Assurance Corporation  
Salinas Basin Agricultural Stewardship Group  
Santa Cruz County Farm Bureau  
Self Help Enterprises  
Service Employees International Union  
Sierra Nevada Brewing Company  
South County Packing Inc.  
State Building and Construction Trades Council  
Strategic Actions for a Just Economy  
Strategic Concepts in Organizing & Policy Education  
Sultana Community Services District  
Sunflower Alliance  
The Coca-Cola Company  
TransForm  
United Farm Workers  
Water Quality Association  
Western Center on Law & Poverty  
Western Growers  
Western United Dairymen  
Wholly H2O

## **OPPOSITION**

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Alameda County Water District  
Amador Water Agency

American Water Works Association,  
California-Nevada Section  
Antelope Valley – East Kern Water Agency  
Association of California Water Agencies  
Bella Vista Water District  
Brooktrails Township Community Services  
District  
Browns Valley Irrigation District  
Burbank Water and Power  
Calaveras County Water District  
CalDesal  
California Coastkeeper Alliance  
California Sportfishing Protection Alliance  
California Water Impact Network  
California Chamber of Commerce  
Calleguas Municipal Water District  
Central Water District  
Citrus Heights Water District  
City of Anaheim Public Utilities Dept  
City of Fairfield  
City of Indio  
City of Merced  
City of Norwalk  
City of Redding  
City of Riverside  
City of Roseville  
City of Santa Rosa  
Coachella Valley Water District  
Coalition of Peninsula Businesses  
Crestline-Lake Arrowhead Water Agency  
Cucamonga Valley Water District  
Del Paso Manor Water District  
Desert Water Agency  
Dublin San Ramon Services District  
East Bay Municipal Utilities District  
East Valley Water District  
Eastern Municipal Water District  
Elsinore Valley Municipal Water District  
El Dorado Irrigation District  
El Toro Water District  
Fair Oaks Water District  
Fallbrook Public Utility District  
Foresthill Public Utility District  
Georgetown Divide Public Utility District  
Greater Eureka Chamber of Commerce  
Helix Water District

Howard Jarvis Taxpayers Association  
Humboldt Baykeeper  
Humboldt Community Services District  
Humboldt Bay Municipal Water District  
Indian Wells Valley Water District  
Indio Water Authority  
Inland Empire Waterkeeper  
Kern County Water Agency  
Kinneloa Irrigation District  
La Canada Irrigation District  
Lake Hemet Municipal Water District  
Las Virgenes Municipal Water District  
League of California Cities  
Malaga County Water District  
Mammoth Community Water District  
Mariana Ranchos County Water District  
McKinleyville Community Services District  
Merced Irrigation District  
Mesa Water District  
Metropolitan Water District of Southern  
California  
Mid-Peninsula Water District  
Mojave Water Agency  
Monte Vista Water District  
Monterey Coastkeeper  
Monterey County Hospitality Association  
National Federation of Business  
Nevada County Resource Conservation  
District  
Olivenhain Municipal Water District  
Orange County Water District  
Otay Water District  
Pacific Coast Federation of Fishermen's  
Association  
Padre Dam Municipal Water District  
Palm Ranch Irrigation District  
Palmdale Water District  
Pico Water District  
Placer County Water Agency  
Quartz Hill Water District  
Rancho California Water District  
Rainbow Municipal Water District  
Regional Water Authority  
Richvale Irrigation District  
Rincon del Diablo Municipal Water  
Rio Alto Water District

Rio Linda Elverta Community Water District  
Rowland Water District  
Russian Riverkeeper  
Sacramento Suburban Water District  
San Diego County Water Authority  
San Gabriel County Water District  
San Juan Water District  
Santa Barbara Channelkeeper  
Santa Fe Irrigation District  
Santa Margarita Water District  
Santa Ynez River Water Conservation District  
Scotts Valley Water District  
South Coast Water District  
South Tahoe Public Utility District  
Southern California Water Committee  
Stockton East Water District  
The Otter Project  
Three Valleys Municipal Water District  
Upper San Gabriel Valley Water District  
Vallecitos Water District  
Valley Center Municipal Water District  
Valley of the Moon Water District  
Vista Irrigation District  
Western Municipal Water District  
Westlands Water District  
Yolo County Flood Control Water Conservation District  
Yorba Linda Water District  
Yuba County Water Agency

### **FOR MORE INFORMATION**

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Contact: Trevor Taylor  
Phone: (916) 651-4017  
Email: [trevor.taylor@sen.ca.gov](mailto:trevor.taylor@sen.ca.gov)



DATE: April 10, 2018  
TO: Water Policy/Technical Advisory Committee  
FROM: Marisa Creter, Executive Director  
RE: **SB 1133 (PORTANTINO)**

## **RECOMMENDED ACTION**

Recommend that the Governing Board support SB 1133 (Portantino).

## **BACKGROUND**

Water Quality Control Plans (referred to locally as The Basin Plan) are the key regulatory documents governing water quality in each hydrologic region of the state, much like a city's general plan. The Basin Plan for Los Angeles watersheds identifies beneficial uses for surface and ground waters, lists the narrative and numerical water quality objectives that must be attained or maintained to protect the designated beneficial uses, and describes necessary implementation programs. Although the plan is supposed to be updated every three years, funding and staff constraints often preclude this, leading to potentially stale beneficial uses and water quality objectives. Yet, those requirements drive compliance requirements and costs.

The Basin Plan for the Los Angeles region was first developed as a unified plan in 1974, long before the 1990 federal regulations implementing the 1987 Clean Water Act amendments to require stormwater permits. The last major revision of the Basin Plan in 1994 did not clearly distinguish between stormwater and traditional “point sources” of discharge, such as from a water treatment plant for example. Despite various amendments to the Basin Plan since 1994, the Plan still does not clearly recognize the episodic and variable nature of stormwater and urban runoff, nor adequately address economic considerations.

In March 2018, the California State Auditor, Elaine M. Howle, released a report on the State and Regional Water Boards. The State Auditor was asked to investigate among other things, how regional water boards establish the requirements of local Municipal Separate Sewer Storm System (MS4) permits, and how the requirements of permits vary from region to region. The report found that:

- Regional Boards have not adequately considered the cost of implementing pollution control requirements. When establishing pollutant control plans, the regional boards have not always adequately considered the costs to local jurisdictions involved in complying with these plans.
- The State Water Board and Regional Boards have established some pollutant control plans without seeking key information, resulting in unnecessary costs for local jurisdictions. The Los Angeles and Central Valley Boards were not sufficiently thorough in their development of certain pollutant control plans because they did not tailor the pollutant limits to the particular water bodies.

- The Los Angeles Water Board used inaccurate information when developing and implementing certain pollutant limits. In addition to the Los Angeles Board's use of insufficient or outdated information, the State Auditor identified two instances in which that board erred in its responsibilities for developing pollutant limits or overseeing their implementation, resulting in inaccurate information that local jurisdictions used to plan their storm water management efforts.
- Meanwhile, local jurisdictions have had limited ability to obtain funds for stormwater infrastructure. Local jurisdictions have limited options for covering the costs of stormwater management. At the same time, changes to permits have caused concern among stormwater managers at local jurisdictions about increased future costs, and many capital projects remain unfunded that would help jurisdictions comply with their permit requirements.

The County of Los Angeles is in the process of creating a stormwater parcel tax and accompanying ballot measure for the November 2018 ballot. If passed, this measure would produce about \$300 - \$400 million annually for the purposes of addressing issues pertaining to water quality, water supply and multi-benefit programs.

## **SB 1133 (PORTANTINO)**

This bill would allow the Los Angeles Regional Water Board to receive funding from permittees, including the Los Angeles County Flood Control District, for the purpose of updating the Los Angeles region Basin Plan. If the proposed Safe, Clean Water Program is approved by voters, the Los Angeles Water Board may accept funds in order to revise the Basin Plan. These funds shall be used by the regional board only for staff and consultants and direct costs to prepare a major revision to the Basin Plan that do all of the following:

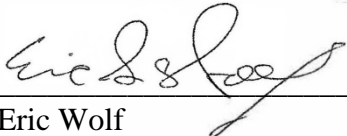
- Develops a watershed chapter structured to be consistent with Sections 13241 and 13242 while integrating a fiscal capability assessment process to implement subdivision (d) of Section 13241.
- Recognizes that concrete-lined flood control channels are different from natural streams.
- Incorporates a compliance floor above which permittees are not expected to comply with water quality objectives.
- Incorporates applicable federal Environmental Protection Agency recommended revised water quality criteria.
- Incorporates stormwater-specific water quality objectives consistent with the episodic and highly variable nature of stormwater and urban runoff.
- Revises the beneficial use chapter to delete potential uses and replace them with probable future beneficial uses consistent with subdivision (a) of Section 13241.
- Modifies the strategic planning and implementation chapter to include a section addressing stormwater and urban runoff, as well as a source control strategy and implementation program.
- Develops a thoroughly revised water quality control plan treating stormwater as a resource and includes a scientific advisory panel and a stakeholder advisory committee.


## **DISCUSSION**

SB 1133 attempts to address several of these deficiencies, applying a potential funding stream to ensure that water quality objectives are based on the most up-to-date scientific studies. This legislation is sponsored by the Los Angeles County Business Federation (Bizfed).

## **RECOMMENDED ACTION**

Recommend that the Governing Board support SB 1133.

Prepared by:   
Eric Wolf  
Senior Management Analyst

Approved by:   
Marisa Creter  
Executive Director

## **ATTACHMENT**

Attachment A – SB 1133 (Portantino)  
Attachment B – SB 1133 Fact Sheet



AMENDED IN SENATE MARCH 19, 2018

**SENATE BILL**

**No. 1133**

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**Introduced by Senator Portantino**

February 13, 2018

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An act to ~~amend~~ *add* Section 23 of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915), relating to the Los Angeles County Flood Control District, 13249 to the Water Code, relating to water quality, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1133, as amended, Portantino. ~~Los Angeles County Flood Control Act.~~ *California regional water quality control board: water quality control plans: funding: Los Angeles region.*

*Existing law, the Porter-Cologne Water Quality Control Act, requires each California regional water quality control board to adopt water quality control plans and to establish water quality objectives in those plans, considering certain factors, to ensure the reasonable protection of beneficial uses and the prevention of nuisance.*

*This bill would authorize a regional board to accept and spend donations of moneys from a permittee for the purpose of updating a water quality control plan, thereby making an appropriation. The bill would authorize the California regional water quality control board, Los Angeles region, to accept and spend certain funds from the Los Angeles County Flood Control District to prepare a major revision to the water quality control plan for the Los Angeles region, as prescribed.*

~~Existing law, the Los Angeles County Flood Control Act, establishes the Los Angeles County Flood Control District and authorizes the district to control and conserve the flood, storm, and other wastewater of the district.~~

~~This bill would make nonsubstantive changes to the provision naming the act.~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. *The Legislature finds and declares as follows:*
- 2     (a) *Consistent with Section 13000 of the Water Code, the quality*
- 3     *of waters of the state should be regulated to attain the highest*
- 4     *water quality which is reasonable considering the uses of the water*
- 5     *and the values involved.*
- 6     (b) *The water quality control plans adopted by the State Water*
- 7     *Resources Control Board and the California regional water quality*
- 8     *control boards pursuant to Section 13240 of the Water Code need*
- 9     *to be based on the best available science and consider the*
- 10    *recommendations of the federal Environmental Protection Agency,*
- 11    *as well as the recommendations of affected state and local*
- 12    *agencies.*
- 13    (c) *Section 13241 of the Water Code lists several important*
- 14    *factors that water boards are to consider when establishing water*
- 15    *quality objectives that will ensure the reasonable protection of*
- 16    *beneficial uses and the prevention of nuisance, and the section*
- 17    *also recognizes that the quality of water may be changed to some*
- 18    *degree without unreasonably affecting beneficial uses.*
- 19    (d) *At the request of the United States Congress, the National*
- 20    *Research Council examined the basis of the total maximum daily*
- 21    *load (TMDL) program and explained its findings in a 2001 report*
- 22    *titled Assessing the TMDL Approach to Water Quality*
- 23    *Management.*
- 24    (e) *A finding of the council’s report was that scientific*
- 25    *uncertainty cannot be avoided in water quality programs, and*
- 26    *water quality regulations should recognize this inherent uncertainty*
- 27    *by means of flexible adjustable implementation programs.*
- 28    (f) *The report recommended that states define appropriate*
- 29    *beneficial use designations, and before TMDL development, refine*
- 30    *these designations, and use and consider attainability analyses*
- 31    *for all water bodies.*

1 (g) The council also recommended that plans implementing  
2 TMDLs be adaptive, with TMDL goals to be periodically assessed  
3 and scientific data used to revise the plan, if necessary.

4 (h) Permittees and others funded an Environmental Defense  
5 Sciences report from February 2002, titled A Review of the Los  
6 Angeles Basin Plan Administrative Record, that provided a detailed  
7 analysis of the administrative record as had been provided to date  
8 of the water quality control plan for the Los Angeles region and  
9 identified four priority areas for water quality control plan reform,  
10 as follows:

11 (1) Incorporation of the Water Code Sections 13241 and 13242  
12 requirements of the Porter-Cologne Water Quality Control Act  
13 (Division 7 (commencing with Section 13000) of the Water Code).

14 (2) Development and implementation of water quality objectives.

15 (3) Correction and revision of beneficial use designations.

16 (4) Revision of the tributary rule.

17 (i) The water quality control plan for the Los Angeles region  
18 was first developed in 1975 and the last major revision was in  
19 1994.

20 (j) The water quality control plan for the Los Angeles region  
21 does not thoroughly distinguish between traditional point sources  
22 and stormwater discharges in the development and application of  
23 water quality standards.

24 (k) California regional water quality control boards have not  
25 completed major revisions of water quality control plans because  
26 of staff and financial resource shortages, although they have made  
27 revisions through the triennial review process.

28 (l) California needs to find a way to finance comprehensive  
29 water quality control plan revisions by all California regional  
30 water quality control boards.

31 (m) The County of Los Angeles is proposing a stormwater  
32 quality funding measure that could provide a source of funding  
33 for the California regional water quality control board, Los  
34 Angeles region, to conduct a major revision to its water quality  
35 control plan to improve the technical and scientific basis of the  
36 plan.

37 (n) Allowing the California regional water quality control board,  
38 Los Angeles region, to accept funds from a stormwater quality  
39 funding measure would provide funding for a pilot project on how  
40 to fund and structure necessary major revisions to water quality

1 control plans to incorporate new criteria recommended by the  
2 federal Environmental Protection Agency and bring the plans up  
3 to date with current science and technology.

4 SEC. 2. Section 13249 is added to the Water Code, to read:

5 13249. (a) A regional board may accept and spend donations  
6 of moneys from a permittee for the purpose of updating a water  
7 quality control plan.

8 (b) If the proposed Safe, Clean Water Program is approved by  
9 the voters of the County of Los Angeles, the California regional  
10 water quality control board, Los Angeles region, may accept funds  
11 from the Los Angeles County Flood Control District to prepare a  
12 major revision to the water quality control plan for the Los Angeles  
13 region to strengthen the scientific and technical basis for the plan  
14 as a pilot project for the state. These funds shall be used by the  
15 regional board only for staff and consultants and direct costs to  
16 prepare a major revision to the water quality control plan that  
17 does all of the following:

18 (1) Develops a watershed chapter structured to be consistent  
19 with Sections 13241 and 13242 while integrating a fiscal capability  
20 assessment process to implement subdivision (d) of Section 13241.

21 (2) Recognizes that concrete-lined flood control channels are  
22 different from natural streams.

23 (3) Incorporates a compliance floor above which permittees  
24 are not expected to comply with water quality objectives.

25 (4) Incorporates applicable federal Environmental Protection  
26 Agency recommended revised water quality criteria.

27 (5) Incorporates stormwater-specific water quality objectives  
28 consistent with the episodic and highly variable nature of  
29 stormwater and urban runoff.

30 (6) Revises the beneficial use chapter to delete potential uses  
31 and replace them with probable future beneficial uses consistent  
32 with subdivision (a) of Section 13241.

33 (7) Modifies the strategic planning and implementation chapter  
34 to include a section addressing stormwater and urban runoff, as  
35 well as a source control strategy and implementation program.

36 (8) Develops a thoroughly revised water quality control plan  
37 treating stormwater as a resource and includes a scientific advisory  
38 panel and a stakeholder advisory committee.

1 SECTION 1. ~~Section 23 of the Los Angeles County Flood~~  
2 ~~Control Act (Chapter 755 of the Statutes of 1915) is amended to~~  
3 ~~read:~~

4 ~~23. This act may be designated and referred to as the “Los~~  
5 ~~Angeles County Flood Control Act,” and any reference designation~~  
6 ~~to the act by that shall be deemed sufficient for all purposes.~~

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# SB 1133 (Portantino) Basin Plan Update Funding

## PROBLEM

Many city officials question whether the 2012 MS4 permits are based on current science and methodologies given the dated models and data used in the Water Quality Control Plan (Basin Plan) for the Los Angeles region. A thorough modernization of the Basin Plan could provide a more realistic plan that adequately considered costs associated with stormwater quality. A recent report, released in March of 2018, provided by the California State Auditor, Elaine M. Howle on the State and Regional Water Boards, finds:

**The Regional Boards Have Not Adequately Considered the Cost of Implementing Pollution Control Requirements.** When establishing pollutant control plans, the regional boards have not always adequately considered the costs to local jurisdictions involved in complying with these plans.

**The State Water Board and Regional Boards Have Established Some Pollutant Control Plans Without Seeking Key Information, Resulting in Unnecessary Costs for Local Jurisdictions.** The Los Angeles and Central Valley boards were not sufficiently thorough in their development of certain pollutant control plans because they did not tailor the pollutant limits to the particular water bodies. The extent to which some pollutants are harmful varies based on the characteristics or conditions of the water body, such as the water body's temperature and mineral content.

**Los Angeles Used Inaccurate Information When Developing and Implementing Certain Pollutant Limits.** In addition to Los Angeles's use of insufficient or outdated information, we identified two instances in which that board erred in its responsibilities for developing pollutant limits or overseeing their implementation, resulting in inaccurate information that local jurisdictions used to plan their storm water management efforts.

## Local Jurisdictions Have Had Limited Ability to Obtain Funds for Storm Water Infrastructure.

Local jurisdictions have limited options for covering the costs of storm water management. Meanwhile, changes to permits have caused concern among storm water managers at local jurisdictions about increased future costs, and many capital projects remain unfunded that would help jurisdictions comply with their permit requirements."

## BACKGROUND

Water Quality Control Plans are the key regulatory documents governing water quality in each hydrologic region of the state, much like a city's general plan. The Basin Plan was first developed as a unified plan in 1974, long before the 1990 federal regulations implementing the 1987 Clean Water Act amendments to require stormwater permits. The last major revision of the Basin Plan in 1994 did not clearly distinguish between stormwater and traditional "point sources." Despite various amendments to the Basin Plan since 1994, the Plan still does not clearly recognize the episodic and variable nature of stormwater and urban runoff, nor adequately address economic considerations.

The County of Los Angeles is in the process of creating a stormwater parcel tax and accompanying ballot measure for the November 2018 Ballot. If passed, this measure would produce about \$300 - \$400 million annually for the purposes of addressing issues pertaining to water quality, water supply and multi-benefit programs.

This bill would allow the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Regional Water Board) to receive funding from permittees/Los Angeles County Flood Control District for the purpose of updating the Los Angeles region's Basin Plan.

## SUMMARY

This bill would authorize a regional board to accept and spend donations of monies from a permittee for the purpose of updating a water quality control plan, thereby making an appropriation. The bill

Office of Senator Anthony J. Portantino  
SB 1133 – Fact Sheet

Contact: Lusine Chinkejian – (916) 651-4025 or [Lusine.Chinkejian@sen.ca.gov](mailto:Lusine.Chinkejian@sen.ca.gov)

would authorize the Los Angeles Regional Water Board, to accept certain funds from the Los Angeles County Flood Control District and spend them to prepare a major revision to the Basin Plan for the Los Angeles region, as prescribed.

### **EXISTING LAW**

Existing law, the Porter-Cologne Water Quality Control Act, requires each California Regional Water Quality Control Board to adopt water quality control plans and to establish water quality objectives in those plans, considering certain factors, to ensure the reasonable protection of beneficial uses and the prevention of nuisance.

### **SUPPORT**

The Los Angeles County Business Federation (BizFed) **SPONSOR**  
Construction Industry Coalition for Water Quality

**Version:** 3/16/2018



DATE: April 10, 2018  
TO: Water Policy/Technical Advisory Committee  
FROM: Marisa Creter, Executive Director  
RE: **AB 2538 (RUBIO)**

## **RECOMMENDED ACTION**

Recommend that the Governing Board support AB 2538 (Rubio).

## **BACKGROUND**

Local governments are required to meet regulatory standards for drinking water, wastewater, and stormwater. The totality of expense in meeting these requirements can create a financial burden on municipalities and often competes for general fund resources creating difficult tradeoffs. Local taxing restrictions and economic realities often preclude passing compliance costs on to ratepayers and in some cases, the regulatory costs associated with water become a financial burden on residents as well.

In recognition of this problem, the Environmental Protection Agency (EPA) created the Financial Capability Assessment (FCA), a framework for assessing a community's ability to finance water-related capital infrastructure and the ability of individual utility customers to pay for water services without undue hardship. The FCA framework identifies the key elements the EPA uses in working with permittees to evaluate how their financial capability should influence compliance schedules. It does not exempt permittees from compliance. The process uses a two-phased approach to consider the burden on both ratepayers and municipalities:

- Ratepayers. The residential share of CWA obligations is compared to the median household income (MHI).
- Municipalities. FCA assesses the financial strength of the permittee.

The U.S. Conference of Mayors (Mayors) completed an affordability survey that examined the financial capability of a diverse group of California cities. In November 2014, the Mayors released their report, *Public Water Cost Per Household: Assessing Financial Impacts of EPA Affordability Criteria in California Cities*. The study reviewed over 30 California cities using the EPA's affordability criteria under FCA. The study found that 10 of those cities had 20% or more of households that exceeded EPA's threshold spending on combined water costs. Under the FCA process those cities would be eligible to request an extension of their timeline for meeting Clean Water Act (CWA) regulations.

The CWA allows the EPA to grant oversight of compliance to states. California is one of many states that have created their own monitoring agencies; in this case the State Water Resources Control Board and the nine regional water boards. Because of this, FCA does not apply to California. AB 2538 attempts to close this gap by creating a financial capability assessment program for the state.

## **AB 2538 (RUBIO)**

This bill would require the state board, by an unspecified date, to establish FCA guidelines for MS4 permittees that are adequate and consistent when considering the costs to local jurisdictions. The bill would require the California Regional Water Quality Control Board, Los Angeles region, to use the guidelines in a pilot project conducted to assess if a financial capability analysis can be effectively used to help municipalities to implement a municipal separate storm sewer system permit. The bill would require the state board to oversee the use of the guidelines and, upon the completion of the pilot project, to make statewide recommendations or site-specific recommendations based on feasibility and the need to address the most prominent pollutants.

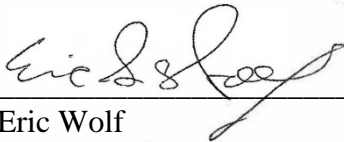
## **DISCUSSION**

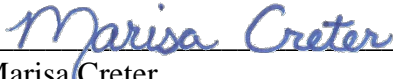
In the 2017 legislative cycle, an FCA bill was introduced by Sen Hernandez as SB 589. Due to concerns about the cost of implementing FCA, SB 589 was amended to only include a pilot program in the Los Angeles region. This year, the FCA concept was picked up by Assemblymember Rubio with the pilot project as beginning language for the bill. Staff is working to amend the bill by adding information from the State Auditor's report which found that regional water boards do not adequately consider the costs that local jurisdictions face in compliance and that the State Water Resources Control Board lacks expertise in municipal finance and accounting.

AB 2538 has been assigned to the Committee on Environmental Safety and Toxic Materials which meets on April 24, 2018. The committee has requested letters of support or opposition by April 17<sup>th</sup>.

## **RECOMMENDED ACTION**

Recommend that the Governing Board support AB 2538 (Rubio).

Prepared by:   
Eric Wolf  
Senior Management Analyst

Approved by:   
Marisa Creter  
Executive Director

## **ATTACHMENT**

Attachment A – AB 2538 (Rubio)  
Attachment B – AB 2538 Fact Sheet

AMENDED IN ASSEMBLY MARCH 23, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2538**

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**Introduced by Assembly Member Rubio**

February 14, 2018

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An act to ~~amend Section 13383.5 of~~ *add Section 13185* to the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 2538, as amended, Rubio. ~~Stormwater. Municipal separate storm sewer systems: financial capability analysis: pilot project.~~

*Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements for the discharge of stormwater in accordance with the federal national pollutant discharge elimination system permit program. Existing law requires the state board or the regional boards to issue waste discharge requirements that ensure compliance with the federal Clean Water Act and apply any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.*

*This bill would require the state board, by an unspecified date, to establish financial capability assessment guidelines for municipal separate storm sewer system permittees that are adequate and consistent when considering the costs to local jurisdictions. The bill would require the California Regional Water Quality Control Board, Los Angeles region, to use the guidelines in a pilot project conducted to assess if a financial capability analysis can be effectively used to help municipalities to implement a municipal separate storm sewer system permit. The bill would require the state board to oversee the use of the*

*guidelines and, upon the completion of the pilot project, to make statewide recommendations or site-specific recommendations based on feasibility and the need to address the most prominent pollutants.*

~~Existing law requires the State Water Resources Control Board to develop monitoring requirements for municipalities and industries that are required to obtain a stormwater permit in accordance with the federal Clean Water Act.~~

~~This bill would make nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. (a) *The Legislature finds and declares as follows:*

2     (1) *On November 24, 2014, the federal Environmental*  
3 *Protection Agency, Office of Enforcement and Compliance*  
4 *Assurance, announced it had adopted a refined financial capability*  
5 *assessment framework to aid in negotiating schedules for*  
6 *compliance with the municipal federal Clean Water Act*  
7 *requirements and in developing integrated management plans.*

8     (2) *The financial capability assessment framework does not*  
9 *alter or waive water quality standards, but offers alternative*  
10 *compliance pathways to municipal separate storm sewer system*  
11 *permittees and achievable schedules for compliance for*  
12 *disadvantaged communities.*

13     (3) *A financial capability assessment is necessary to set*  
14 *achievable schedules for water quality objectives in water quality*  
15 *control plans under the Porter-Cologne Water Quality Control*  
16 *Act (Division 7 (commencing with Section 13000) of the Water*  
17 *Code) and to develop integrated regional water management plans.*

18     (b) *It is the intent of the Legislature in enacting this measure*  
19 *to do all of the following:*

20     (1) *Comply with the federal Clean Water Act (33 U.S.C. Sec.*  
21 *1251 et seq.).*

22     (2) *Help local governments that are making a good faith effort*  
23 *to be stewards of the environment but lack a dedicated revenue*  
24 *source for stormwater.*

25     (3) *Find solutions and share the cost of compliance for local*  
26 *governments that are participating in a watershed management*  
27 *program or an enhanced watershed management program.*

1 (4) *Not weaken environmental protections for lower income*  
2 *communities but rather to provide funding to achieve the same*  
3 *protections for all communities.*

4 (5) *Help the State Water Resources Control Board, the*  
5 *California regional water quality control boards, and local*  
6 *governments to prioritize the many competing requirements faced*  
7 *by communities dealing with funding drinking water, groundwater,*  
8 *sanitary sewer, flood protection, and stormwater improvements.*

9 (6) *Give communities time to apply for grants to overcome the*  
10 *financial constraints of local government without fear of fines and*  
11 *third-party litigation.*

12 *SEC. 2. Section 13185 is added to the Water Code, to read:*

13 *13185. (a) By \_\_\_\_\_, the state board shall establish financial*  
14 *capability assessment guidelines for municipal separate storm*  
15 *sewer system permittees that are adequate and consistent when*  
16 *considering the costs to local jurisdictions, including costs incurred*  
17 *in previous years. In developing the guidelines, the state board*  
18 *shall document any source it uses to develop an estimate of local*  
19 *costs and the overall cost of stormwater management. The state*  
20 *board shall consider, but is not limited to considering, both of the*  
21 *following United States Environmental Protection Agency policies*  
22 *in drafting the financial capability assessment guidelines:*

23 *(1) Combined Sewer Overflows—Guidance for Financial*  
24 *Capability Assessment and Schedule Development, dated February*  
25 *1997.*

26 *(2) Affordability Criteria for Small Drinking Water Systems:*  
27 *An EPA Science Advisory Board Report, dated December 2002.*

28 *(b) The regional board for the Los Angeles region shall use the*  
29 *guidelines developed by the state board in a pilot project conducted*  
30 *to assess if a financial capability analysis can be effectively used*  
31 *to help municipalities to implement a municipal separate storm*  
32 *sewer system permit. The state board shall oversee the use of the*  
33 *guidelines and, upon completion of the pilot project, shall make*  
34 *statewide recommendations or site-specific recommendations*  
35 *based on feasibility and the need to address the most prominent*  
36 *pollutants.*

37 ~~SECTION 1. Section 13383.5 of the Water Code is amended~~  
38 ~~to read:~~

39 ~~13383.5. (a) As used in this section, “regulated municipalities~~  
40 ~~and industries” means the municipalities and industries required~~

1 to obtain a stormwater permit under Section 402(p) of the Clean  
2 Water Act (33 U.S.C. Sec. 1342(p)) and implementing regulations.

3 ~~(b) This section only applies to regulated municipalities that~~  
4 ~~were subject to a stormwater permit on or before December 31,~~  
5 ~~2001, and to regulated industries that are subject to the General~~  
6 ~~Permit for Stormwater Discharges Associated with Industrial~~  
7 ~~Activities Excluding Construction Activities.~~

8 ~~(c) Before January 1, 2003, the state board shall develop~~  
9 ~~minimum monitoring requirements for each regulated municipality~~  
10 ~~and minimum standard monitoring requirements for regulated~~  
11 ~~industries. This program shall include, but is not limited to, all of~~  
12 ~~the following:~~

13 ~~(1) Standardized methods for collection of stormwater samples.~~

14 ~~(2) Standardized methods for analysis of stormwater samples.~~

15 ~~(3) A requirement that every sample analysis under this program~~  
16 ~~be completed by a state-certified laboratory or by the regulated~~  
17 ~~municipality or industry in the field in accordance with the quality~~  
18 ~~assurance and quality control protocols established pursuant to~~  
19 ~~this section.~~

20 ~~(4) A standardized reporting format.~~

21 ~~(5) Standard sampling and analysis programs for quality~~  
22 ~~assurance and quality control.~~

23 ~~(6) Minimum detection limits.~~

24 ~~(7) Annual reporting requirements for regulated municipalities~~  
25 ~~and industries.~~

26 ~~(8) For the purposes of determining constituents to be sampled~~  
27 ~~for, sampling intervals, and sampling frequencies, to be included~~  
28 ~~in a municipal stormwater permit monitoring program, the regional~~  
29 ~~board shall consider the following information, as the regional~~  
30 ~~board determines to be applicable:~~

31 ~~(A) Discharge characterization monitoring data.~~

32 ~~(B) Water quality data collected through the permit monitoring~~  
33 ~~program.~~

34 ~~(C) Applicable water quality data collected, analyzed, and~~  
35 ~~reported by federal, state, and local agencies, and other public and~~  
36 ~~private entities.~~

37 ~~(D) Any applicable listing under Section 303(d) of the Clean~~  
38 ~~Water Act (33 U.S.C. Sec. 1313).~~

1 ~~(E) Applicable water quality objectives and criteria established~~  
2 ~~in accordance with the regional board basin plans, statewide plans,~~  
3 ~~and federal regulations.~~

4 ~~(F) Reports and studies regarding source contribution of~~  
5 ~~pollutants in runoff not based on direct water quality measurements.~~

6 ~~(d) The requirements prescribed pursuant to this section shall~~  
7 ~~be included in all stormwater permits for regulated municipalities~~  
8 ~~and industries that are reissued following development of the~~  
9 ~~requirements described in subdivision (c). Those permits shall~~  
10 ~~include these provisions on or before July 1, 2008. In a year in~~  
11 ~~which the Legislature appropriates sufficient funds for that purpose,~~  
12 ~~the state board shall make available to the public via the Internet~~  
13 ~~a summary of the results obtained from stormwater monitoring~~  
14 ~~conducted in accordance with this section.~~

O



## AB 2538 (Rubio) Stormwater Financial Capabilities Assessment

### Bill Summary

**Assembly Bill 2538 requires that the State Water Resources Control Board develop Financial Capability Assessment (FCA) guidelines for cities and counties (permittees) looking to comply with the federal Clean Water Act (CWA). This bill will not alter or waive water quality standards, but rather, help permittees and disadvantaged communities meet CWA requirements.**

### Existing Law

EPA first adopted FCA factors in 1997, and updating in 2014, to assess community water quality compliance costs, burden on individual households, and to help find the most cost-effective ways to meet CWA objectives.

FCA establishes a process to assist regulators and permittees in prioritizing water quality improvements and schedules for compliance, while taking communities financial capabilities into careful consideration. Although FCA process is in place for several states, California manages its water quality through the Porter Cologne Act (1969) and thus, is not subject to FCA guidelines.

### Background

The CWA requires permittees to obtain permits to operate their stormwater systems. Permits serve as licenses for permittees to discharge stormwater into rivers, lakes, ocean or streams (known as receiving waters). Many local governments are also required to implement established waste load allocations for pollutants, in accordance with strict compliance schedules. Cities and counties must also comply with the Safe Drinking Water Act and ongoing operations and maintenance costs for drinking water and waste water systems.

The U.S. Conference of Mayors (Mayors) worked with EPA to revise the FCA policy. As part of the revision process, Mayors completed an affordability survey that examined the financial capability of a diverse group of California cities. In November 2014, based on survey results, the Mayors released *Public Water Cost Per Household: Assessing Financial Impacts of EPA Affordability Criteria in California Cities*. The study reviewed over 30 California cities in the EPA's affordability criteria under FCA. The study found that 10 of those cities had 20% or more number of households that exceeded EPA's threshold spending on combined water costs.

The study was completed prior to the implementation of the most recent Los Angeles area permits, which have resulted in additional financial burdens. Given that most cities do not have a dedicated revenue source for stormwater management, these costs compete with other public services provided by local governments' general fund, including law enforcement, fire and paramedics, traffic and transportation infrastructure, street and road repairs, and maintenance of parks and open spaces.

California's own State Auditor released a report on March 1, 2018, stating that regional water boards do not adequately consider the costs that local jurisdictions face in compliance and that the State Resources Control Board lacks expertise in municipal finance and accounting. Without closing these gaps, local communities will continue to be faced with ever-increasing unfunded regulations and no defined process for prioritizing compliance.

### Details of the Bill

AB 2538 requires the State Water Resources Control Board and Los Angeles Regional Water Board to consider the EPA's policies when developing FCA policy guidelines. This bill would also require that the Los Angeles Regional Water Board use the guidelines developed in a pilot project, assessing the financial capability of municipalities, within the Los Angeles area to implement water quality plans, and recommend appropriate changes to compliance schedules when applicable.

### Support

San Gabriel Valley Council of Governments (Sponsor)

### Opposition

None on file

### For More Information

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# Media Release

**Los Angeles Regional Water Quality Control Board**  
<https://www.waterboards.ca.gov/losangeles/>

## Los Angeles Water Board Names Deborah Smith as New Executive Officer

**FOR IMMEDIATE RELEASE**  
**March 26, 2018**

**Contact:** Miryam Barajas  
**Phone:** (916) 341-5263

Los Angeles - The Los Angeles Regional Water Quality Control Board has selected Deborah Smith as its next Executive Officer. Smith, who had been Chief Deputy Executive Officer, will replace Samuel Unger, who retires on March 31.

“The entire Board is very pleased with Ms. Smith’s selection,” said Los Angeles Water Board Chair Madelyn Glickfeld. “She has demonstrated strong leadership from her very first years at the Board, when she was selected to assemble and lead a team to perform a comprehensive update to the Region’s Water Quality Control Plan. That major project kicked off 29 years of success and accomplishment at the Board.”

Since 1989, Smith has worked in various capacities for the Los Angeles Regional Water Board, building and improving the many programs in her Division. She has 20 years of service in the Executive Office, first as Assistant Executive Officer and later as Chief Deputy Executive Officer. Smith brings a wealth of scientific and regulatory knowledge and experience, a record of accomplishment, and a passion for protecting and improving water quality.

Smith’s vision has led to a number of “firsts” in California and in some cases, the country. These include her early work addressing trash, ammonia and emerging chemicals of concern (e.g. pharmaceuticals), as well as the impacts of climate change on water quality. In 1996, Smith was the first in the nation to recommend listing trash as a pollutant that impaired waterways, leading to the country’s first trash Total Maximum Daily Loads (TMDLs) in 1999. (Under the federal Clean Water Act, TMDLs limit the amount of pollutants that can be discharged to a surface water.)

From 1999 to 2013, Smith worked closely with the U.S. Environmental Protection Agency (US EPA) to develop a plan for and oversee the completion of all of the TMDLs in the region per a US EPA consent decree. The adoption of 47 TMDLs addressing approximately 175 waterbodies provided the framework for bringing rivers and coastal waters in the Los Angeles

region back into compliance with water quality standards so that aquatic life and human uses can be fully supported for current and future generations.

In 2012, Smith and her team led efforts to develop an innovative municipal stormwater permit that promotes multiple benefits, including augmenting water supplies, offsetting imported water use and greening our communities in order to provide habitat and healthier environments.

Smith has also been a leader in examining the effects of climate change on water quality and water resources in the region, which led to the development of a Climate Change Framework in 2015. This effort now serves as a model for other regions and agencies. Several key studies are underway that will inform the further development of this framework and strategies to integrate climate change factors with all of the Board's programs, one of which is examining the effects of prolonged droughts on aquatic species in our rivers.

Smith began her 33-year career as a water quality regulator in Louisiana, where she conducted wetland determinations for the state Department of Transportation and Development and later worked as an environmental scientist for the Louisiana Department of Environmental Quality. Smith completed her B.S. in Biology from Slippery Rock State College and her M.S. in Zoology at Louisiana State University. She conducted additional post-graduate research and studies at LSU and the University of Washington, Friday Harbor Marine Labs.

The Los Angeles Region encompasses all coastal watersheds and drainages flowing to the Pacific Ocean between Rincon Point and the eastern Los Angeles County line, as well as the drainages of five coastal islands Rivers, streams, lakes, estuaries, groundwater and the Pacific Ocean within three nautical miles of the coast. The Los Angeles Region is the State's most densely populated and industrialized region. It has a population of more than 10 million people, thousands of regulated facilities, and a great diversity of built and natural environments to regulate, protect, and enjoy.

The Los Angeles Water Board has a staff of 149 employees and an annual operating budget of more than \$30 million.

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# REPORT

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DATE: April 10, 2018

TO: Water Policy/Technical Advisory Committee

FROM: Marisa Creter, Executive Director

RE: **SGVCOG WASHINGTON, D.C. MEETINGS RECAP**

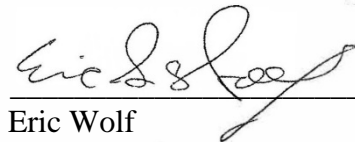
## **RECOMMENDED ACTION**

For information.

## **BACKGROUND**

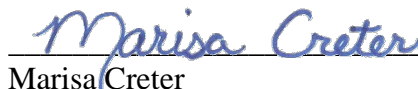
On March 19, 2018, San Gabriel Valley Council of Governments (SGVCOG) Governing Board members met with the US Conference of Mayors (Mayors) in Washington, D.C. for discussion regarding federal water and stormwater legislation. The Mayors updated the group on their efforts to work with congress on a bill, H.R. 465 (Gibbs), to promote integrated planning. They are also supporting increases to State Revolving Funds that provide water-related grants and loans. Finally, the Mayors introduced members to the Water Infrastructure Financing Innovation Act (WIFIA) designed to provide long-term, low-interest loans for regionally and nationally significant projects.

Prepared by:



Eric Wolf  
Senior Management Analyst

Approved by:



Marisa Creter  
Executive Director

## **ATTACHMENT**

Attachment A – U.S. Conference of Mayors H.R. 465 (Gibbs) Talking Points

Attachment B – U. S. Conference of Mayors WIFIA Talking Points





## **Water Integrated Planning: Pass an Integrated Planning Bill**

Many communities are facing costly unfunded mandates that allow EPA to redirect local water infrastructure expenditures. As a result, local governments need to raise rates that are often unaffordable to citizens. The Mayors Water Council worked with EPA to develop a policy called Integrated Planning (IP). IP allows a community increased flexibility when complying with Clean Water Act requirements in a more cost-effective and sustainable manner.

In October 2017, the Senate passed the Water Infrastructure Flexibility Act (S. 692), legislation, which would codify Integrated Planning and require EPA to update its financial capability guidance.

The House has introduced three bills, with the Conference endorsing Ohio Representative Bob Gibbs' bill (HR 465).

***Recommendation: Complete work on Integrated Planning legislation to provide communities a tool to better afford Clean Water Act unfunded mandates.***

### **Talking Points**

- Cities are facing costly unfunded mandates as it relates to water and wastewater compliance (ranging from hundreds of thousands to billions of dollars/community). (EPA, for example, is currently soliciting opinions on a potential Lead and Copper Rule that would place a \$28-\$48 billion unfunded mandate on local governments for drinking water pipes that are usually the responsibility of homeowners.)
- The result is that EPA can redirect local infrastructure expenditures over to EPA's priorities, not the community's.
- We need to reestablish the federal-city partnership to solve environmental problems.
- The House needs to join the Senate and pass an Integrated Planning bill, which would allow a community to work with EPA to develop a plan to achieve Clean Water Act compliance goals in a more cost-effective manner.
- We want the House to pass Representative Gibbs' bill (HR 465), and then work with the Senate to pass legislation this year.



## **MONDAY MARCH 19, 2018**

- **HR 465 Gibbs bill was changed by the Minority staff as a compromise version in December**
- **House Transportation and Infrastructure Majority staff is considering several of the Minority proposals, and is also in the process of merging 2 other House bills on IP**
- **A compromise version is expected to be available by next week for review and Committee consideration**
- **Areas of change to the HR 465:**
  - **The affordability trigger is 2% of household income to measure burden; and 20% of the households to measure how widespread the burden is. These will be rebuttable presumptions instead of hard and fast. 2% MHI will no longer be the sole measure.**
  - **NPDES permittees utilizing the IP process will have more than 1 permit term to reach compliance.**
  - **Incorporation of the EPA Ombudsman position to pursue transparency and fairness for cities.**
  - **When setting standards for a permit EPA will be required to tabulate the cumulative cost of compliance for all Clean Water Act requirements and choose the most flexible approach for the city.**



### **Water/Sewer: Increase SRF Funding and Increase Funding the WIFIA Program**

Local governments are responsible for providing their citizens basic water and wastewater services to protect public health. Meanwhile, cities are dealing with aged systems, leaking pipes, costly unfunded EPA mandates, and citizens who can no longer afford these costs.

Local governments spent \$1.7 trillion over the past 15 years on water and wastewater infrastructure and operations. In 2015 alone, local governments spent \$118 billion. Each year, Congress, through the State Revolving Fund (SRF), give the states about \$2 billion in grants that they, in turn, gave to local governments in the form of loans. As a result, local governments are now responsible for 98 percent of all water and wastewater expenditures.

Despite this significant investment, additional money and financing tools are needed. Cities use a wide-variety of financing mechanisms including municipal bonds, public-private partnerships, increasing user fees, Private Activity Bonds, and SRF loans.

WIFIA stands for the Water Infrastructure Financing Innovation Act. It is a new EPA program, which is based on U.S. DOT's TIFIA program. WIFIA is designed to provide long-term, low-cost supplemental loans for regionally and nationally significant projects.

***Recommendations: Raise SRF grants by nearly 50 percent or \$900 million annually, directing states to use these funds for no interest loans to the neediest local areas. Increase the capitalization of WIFIA by at least \$100 million annually to assist more projects.***

#### **Talking Points**

- Local governments spent \$1.7 trillion over the past 15 years on water and wastewater infrastructure and operations. In 2015 alone, local governments spent \$118 billion.
- Congress give the states about \$2 billion in grants that they, in turn, give to local governments in the form of SRF loans.
- In addition to relief from unfunded mandates, we need more resources and tools to pay for water and wastewater infrastructure and operations.
- We are asking you to raise the SRF grants by at least 50 percent - an additional \$900 million – and to direct the states to use these funds to provide no interest loans to needy local areas.
- We are also recommending that at least \$100 million annually be provided to the WIFIA program, to further its capitalization in order to assist more projects.