



- Board of Directors
Communications and Legislation Committee

3/12/2019 Board Meeting

9-4

Subject

Report on Safe and Affordable Drinking Water Initiatives

Executive Summary

Some drinking water systems in small and economically disadvantaged communities chronically struggle to provide an adequate supply of safe water. These systems often lack the technical, managerial, and financial capacity to deepen wells, install treatment, or consolidate service with neighboring communities. The Brown and Newsom Administrations, the Legislature, water agencies, and various community groups and trade associations have sought to address this problem with policies and proposals to create new sustainable funding, incentivize consolidation, and provide technical assistance. This letter reviews the various initiatives, past and present; discusses policy implications for Metropolitan; and describes the current policy proposals before the Legislature.

Details

Background

In 2012, California enacted a new law (AB 685, Eng) that declared “every human being has the right to safe, clean, affordable, and accessible water for human consumption, cooking, and sanitary purposes.” Although more than 97 percent of Californians receive safe water every year, an average of 200,000 people are served by small public water systems that exceed a safe level for some regulated contaminants. Most of these exceedances are due to technical, managerial, and operational failures.

Providing safe and affordable drinking water to disadvantaged communities using a sustainable funding source is one of Governor Newsom’s top priorities. In the 2019 State of the State address, the Governor called on the Legislature to solve the “moral disgrace and medical emergency” experienced by impacted communities across the state. His proposed 2019-2020 state budget allocated \$168.5 million in Proposition 68 funds for infrastructure loans and grants, \$20 million in General Fund (GF) for emergency water supplies and technical assistance, and \$4.9 million from the General Fund to establish a Safe Drinking Water Fund (SDW) and fee collection system. The Governor also appointed Laurel Firestone, former director of the environmental justice nonprofit organization, Community Water Center, to the State Water Resources Control Board (State Water Board), a decision that reinforced his desire to solve the problems associated with providing safe drinking water to disadvantaged communities.

State Water Resources Control Board

The State Water Board administers programs to ensure safe drinking water for all Californians. The State Water Board oversees the Drinking Water State Revolving Fund, which provides low- and zero-interest loans to public water systems to fund infrastructure improvements. In order to receive funding, a public water system must demonstrate a reliable source of revenue to cover new treatment system operation and maintenance (O&M) costs. The State Water Board also manages several other programs to improve access to safe drinking water. (**Attachment 1**). Despite funds being available for capital improvements, small public water systems located in disadvantaged communities are often ineligible to secure grants and loans for treatment infrastructure because the

costs are high, many of their customers are low-income, and/or their customer base is small making it difficult to generate sufficient revenue to cover O&M costs and repay the loans.

Safe Drinking Water Legislation

2017

Senate Bill 623 (SB 623)

In 2017, Senator Monning (D-Carmel) authored SB 623 to establish the Safe and Affordable Drinking Water Fund (SADW) to create a sustainable funding source to ensure all Californians have access to safe drinking water. The proposed revenue sources for the SADW included a combination of fees on fertilizer sales, milk production, and livestock operations, and a service connection charge on customers of retail public water systems. In addition, the bill proposed “safe harbor” provision that waived enforcement actions for agricultural operators that caused nitrate contamination of groundwater. To qualify for enforcement waiver, agricultural operators had to pay fees and comply with their discharge permit requirements. Metropolitan opposed SB 623, unless it was amended, to eliminate the tax on retail water sales and the “safe harbor” provisions. SB 623 failed to pass the Assembly Rules Committee at the end of the two-year session amidst widespread opposition from a coalition led by the Association of California Water Agencies (ACWA), California Municipal Utilities Association (CMUA) and more than 100 individual water agencies and other statewide associations.

2018

State Water Board Needs Assessment

Governor Brown proposed establishing a SADW in the 2018 budget proposal. The revenue source for the SADW was fees collected from agricultural and water users. The Legislature did not approve the Governor’s budget proposal. Instead, \$3 million was authorized from the GF for the State Water Board to develop an estimate of the cost to bring small, failing public water systems into compliance. The State Water Board is holding public workshops to seek input on the needs assessment.

Senate Bills 844 and 845 (SB 844 and SB 845)

In 2018, Senator Monning (D-Carmel) introduced two bills, SB 844 and SB 845. SB 844 proposed to collect fees from agriculture operations. SB 845 established the SADW and authorized the collection of fees from water users. SB 845 proposed that public water agencies provide their customers an opportunity to pay a voluntary remittance to support the SADW. SB 844 and SB 845 passed the Senate but failed to pass the Appropriations Committee.

Assembly Bill 2050 (AB 2050)

Eastern Municipal Water District (Eastern) and the CMUA co-sponsored AB 2050 by then-Assembly Member Caballero (D-Salinas) to address the governance issues associated with small failing water systems. AB 2050 proposed a voluntary program to merge small, non-contiguous water systems that consistently fail to meet safe drinking water standards into a regional public water authority that would operate together at a lower cost; ensure better financing opportunities because of a larger customer base; and improve their ability to access public funding. AB 2050 passed the Legislature, but Governor Brown vetoed the bill stating it was bureaucratic and expensive and failed to identify a funding source to pay for O&M costs.

2019

Governor Newsom’s budget trailer bill

At the start of the 2019-2020 legislative sessions, the Newsom Administration introduced a budget trailer bill, Environmental Justice, Safe and Affordable Drinking Water, and Exide Clean Up, virtually identical to last year’s trailer bill and SB 623 (Monning, D-Carmel) from 2017. The 2019 trailer bill would establish a SADW to assist communities and domestic well owners to address contaminants that exceed safe levels. Money from the SADW could be used to provide replacement water; develop and implement long-term solutions, including capital and O&M costs; identify and provide outreach to eligible communities and individuals, and test the drinking water quality of domestic wells serving low-income households. A perpetual tax on retail water providers of approximately one dollar per service connection per month and 15 years of fees from agricultural operations (in exchange for limited relief from clean-up and abatement orders) would support the SADW. The water tax would

generate up to \$110 million per year, and the agricultural fees would raise up to \$30 million per year. The State Water Board would manage the SADW.

Unlike other programs in the state budget which address social and economic inequities, such as Medi-Cal and CalFresh (the state food stamp program), the proposed trailer bill includes no GF expenditures for either benefits or administration of the SADW. However, the bill does appropriate up to \$100 million from the GF for lead contamination cleanup caused by Exide Technologies in the City of Vernon. The Legislative Analyst's Office identified three issues for the Legislature to consider as it deliberates on the trailer bill provisions: (1) consistency with the state's human right to water policy; (2) uncertainty about the estimated revenues that would be generated by the proposal and the amount of funding needed to address the problem; and (3) consistency with the polluter pays principle.

Several placeholder bills, also known as "spot bills," have been introduced in 2019 including: AB 134 by Assembly Member Bloom (D-Santa Monica); AB 217 by Assembly Member Garcia (D-Coachella); AB 1381 by Assembly Member Salas (D-Bakersfield); and SB 200 by Senator Monning (D-Carmel). These measures are potential legislative vehicles to address the drinking water funding needs and additional policies necessary to ensure safe water for disadvantaged communities.

Senate Bill 414 (SB 414)

Senator Caballero (D-Salinas) introduced SB 414, The Small System Water Authority Act of 2019, co-sponsored by Eastern and CMUA. The bill is similar to AB 2050 from 2018 as referenced above.

ACWA/CMUA Safe Drinking Water Trust Fund

Senator Caballero (D-Salinas) has also introduced SB 669, which would create the Safe Drinking Water Trust Fund, co-sponsored by ACWA and CMUA as an alternative funding proposal. This measure is summarized in a separate board letter for consideration and action.

Together, SB 414 and SB 669 from Senator Caballero are intended to provide a comprehensive approach and solution to the safe drinking water challenges throughout the state.

Policy Discussion

Public Goods Charge

Metropolitan's Board adopted a policy of opposing a public goods charge, or other charges levied on water agencies for funding broader public benefits on December 12, 2017, and readopted the policy in December 2018. Based on this policy, Metropolitan objected to the proposed imposition of a permanent tax on ratepayers of public water systems as proposed in SB 623. Metropolitan argued that it was hard to justify a nexus between urban retail water customers and the factors contributing to the lack of safe water in small, rural disadvantaged communities. Absent a modification of Metropolitan's policy in this area, staff will oppose the provisions in the FY 2019/20 budget trailer bill and any additional policy bills which impose fees on the broader water industry for improving failing water systems.

Polluter's Pay Principle

On August 21, 2012, the Metropolitan Board adopted a policy supporting water quality protection for groundwater basins and, most importantly, protection from sources of drinking water pollutants. Consistent with that policy, in 2018 Metropolitan raised concerns that the "safe harbor" provisions in SB 623 may not adequately support the "polluter pays" principle.

The Porter-Cologne Water Quality Control Act provides the State Water Board and Regional Water Quality Control Boards with the authority to issue permits and waivers that regulate agricultural practices that contribute to water contamination. Under the law, the State Water Board can investigate nitrate pollution and require an agricultural operation to clean up or abate its impacts. A cleanup and abatement order may require replacement water service to each affected public water supplier or private well owner. Certain agricultural operators in the Tulare Lake Basin and the Central Coast, for example, are under orders to provide replacement water to communities impacted by nitrate contamination. Though clean-up and abatement orders are highly site-specific and require a substantial body of evidence, the orders remain a useful tool for ensuring that responsible parties equitably and proportionally contribute to the cost of mitigating the pollution. By assessing a fee solely on the

sale of nitrogen-based fertilizers, agricultural operations would pay into the SADW only according to their present use and not based on historical practices. Absent a modification of Metropolitan's policy in this area, staff recommend opposing any policy bill that contains a similar "safe harbor" provision, unless amended to be consistent with the responsible party principle.

Governance

A primary contributing factor to the failure of small, rural systems to maintain adequate drinking water protections is the expense of operating and maintaining systems given the small customer base to spread increasing costs of regulations and treatment. New governance models that allow districts to consolidate functions and share administrative costs may help ensure the long-term viability of underperforming systems and reduce the overall need for subsidies. In 2018, Metropolitan supported AB 2050 (Caballero) to address the current gap in governance models, beyond the existing State Water Board powers of consolidation of districts, to provide a mechanism for non-contiguous, small systems to have increased technical, financial and managerial capacity, for better management of small, rural water systems. Senator Caballero has introduced a successor bill to AB 2050, SB 414, to provide an additional tool to address governance challenges contributing to the complex problem of underperforming systems. Metropolitan will support SB 414 (Caballero), consistent with support for AB 2050 (Caballero) in 2018.

Conclusion

For decades, small water systems and some domestic well owners have not been able to access safe water in their communities. Following California's adoption of the human right to water policy in 2012, the State Water Board, environmental justice advocates, and legislators have sought to find a sustainable funding mechanism to improve access. The Newsom Administration has identified this as a priority for the 2019 legislative session. Given the alignment between Governor Newsom's budget trailer bill, several spot bills introduced to date, and the Democratic supermajority in the Legislature, momentum is building to identify some type of permanent funding source to supplement the SDW, including a fee on water users.

Staff anticipates returning to the Board in coming months for future board actions related to Safe and Affordable Drinking Water.

Policy

By Minute Item 51418, dated December 11, 2018, the Board adopted State Legislative Priorities and Principles for 2019.

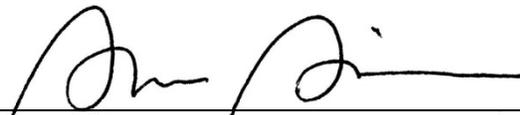
By Minute Items 51050, dated December 12, 2017, the Board adopted State Legislative Priorities and Principles for 2018, as amended.

By Minute Item 49165, dated August 21, 2012, the Board adopted Source Water Quality Protection Policy Principles, as amended.

By Minute Item 46191, dated March 21, 2005—Drinking Water Quality.

Fiscal Impact

Unknown as to Metropolitan



Susan Sims 3/6/2019
Manager, External Affairs *Date*



Jeffrey Kightlinger 3/6/2019
General Manager *Date*

Attachment 1 – Legislative Analyst Office 2019-20 Budget Report: Safe and Affordable Drinking Water Chapter

Ref# ea12661576

Legislative Analyst Office 2019-20 Budget Report: Safe and Affordable Drinking Water Chapter

WATER

SAFE AND AFFORDABLE DRINKING WATER

The administration proposes budget trailer legislation to implement a significant new policy that would impose new charges on water system customers and certain agricultural entities to implement a new financial assistance program to address unsafe drinking water. We identify various issues for the Legislature to consider as it deliberates on the proposal, including (1) consistency with the state's human right to water policy, (2) uncertainty about the estimated revenues that would be generated and the amount of funding needed to address the problem, (3) comparing the beneficiaries of the program with those who would pay the new charges, and (4) trade-offs associated with the proposal's safe harbor provisions.

Background

Safe and Affordable Drinking Water (SADW) a Human Right. In response to concerns about the prevalence of unsafe drinking water in California, the Legislature passed Chapter 524 of 2012 (AB 685, Eng). This law declares the state's policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. Under Chapter 524, state agencies are required to consider this policy when revising, adopting, or establishing policies, regulations, and grant criteria. Chapter 524 clarifies that it does not expand the state's obligations to provide water or require the state to fund water infrastructure.

Multiple Causes of Unsafe Drinking Water. The causes of unsafe drinking water can generally be separated into two categories: (1) contamination caused by human action and (2) naturally occurring contaminants. In some areas, there are both human caused and natural contaminants in the drinking water.

There are about 9,000 water systems in California regulated by the state and counties

(generally those with four or more service connections—usually the point of access between a water system's service pipe and a user's piping). In addition, there are an unknown number of individual wells and water systems serving four or fewer connections. Of that total, there were 459 larger water systems (referred to as "public water systems" and generally with 15 or more service connections) that were out of compliance because they incurred at least one water quality violation in 2017. These affected systems served almost 600,000 Californians. Two of the most commonly detected pollutants in contaminated water are arsenic and nitrates. In 2017, State Water Resources Control Board (SWRCB) found 133 public water systems out of compliance for arsenic standards and 114 public water systems out of compliance for nitrate standards. High concentrations of nitrate in groundwater are primarily caused by human activities including fertilizer application (synthetic and manure), animal operations such as dairies, industrial sources (wastewater treatment and food processing facilities), and septic systems. Agricultural fertilizers and animal wastes applied to croplands are by far the largest regional sources of nitrate in groundwater, although other sources can be important in certain areas.

SWRCB Administers Programs to Provide Safe Drinking Water. The SWRCB administers the Drinking Water State Revolving Fund (DWSRF), which provides continuously appropriated funding for low- and zero-interest loans, debt refinancing, and principal forgiveness to public water systems for infrastructure improvements to correct system deficiencies and improve drinking water quality. Eligible projects include the planning, design, and construction of drinking water projects such as water treatment systems, distribution systems, and consolidation with another water system that has safe drinking water. In order to receive funding, water systems generally must demonstrate the ability to generate sufficient revenue to perform operations and maintenance (O&M) on new capital infrastructure, as well as repay any loans. The

program is funded by annual capitalization grants from the U.S. Environmental Protection Agency and a federally required 20 percent state match (usually from bond funds). The federal and state funds are then used to provide financial assistance for eligible projects. In 2017-18, SWRCB estimates the DWSRF disbursed about \$301 million in new DWSRF financing for 26 planning and construction projects to address drinking water issues.

SWRCB also administers other temporary programs to improve access to safe and affordable drinking water. For example, SWRCB administers:

- **Drinking Water for Schools.** Recent budgets provided \$10 million General Fund in 2016-17 and another \$6.8 million in 2018-19 for grants to local education agencies to improve access to, and the quality of, drinking water in public schools. Schools serving small disadvantaged communities are the highest priority for this program.
- **Household Drinking Water Well Replacement Program.** The 2017-18 state budget provided \$8 million in one-time General Fund support for grants to assist individual households and small water systems with less than 15 connections to replace failed drinking water wells for disadvantaged households. These funds are administered by two nonprofit organizations.
- **Household Drinking Water and Wastewater Needs.** The 2018-19 budget includes \$10 million from the General Fund on a one-time basis for relief grants to households to fund well replacement, septic system replacement, permanent connections to public systems, treatment and cleanup of abandoned wells and septic tanks, certain water treatment systems, and debt relief for households who have financed well replacement as a result of the drought emergency.
- **Lead at Licensed Day Care Centers.** The budget provides \$5 million in one-time General Fund support in 2018-19 for grants to test drinking water for lead at licensed child care centers and to remediate lead in plumbing and drinking water fixtures.

The board has also administers funds approved by the voters through various bond measures for capital investments, as well as some O&M costs aimed at providing safe drinking water. For example, Proposition 68 authorized \$250 million for safe drinking water. Some of this funding supports the DWSRF.

Lack of O&M Funding an Obstacle for Some Systems. Some water systems—often those in disadvantaged communities—are unable to access the funding for capital improvements available through DWSRF because they cannot demonstrate the ability to generate sufficient revenue to perform O&M on new capital infrastructure. The challenge in these systems is often a product of a combination of factors, including the high costs of the investments required, low income of the customers, and the small number of customers across whom the costs would need to be spread.

Legislature Considered Safe and Affordable Drinking Water Proposal in 2018. In 2018, the Governor proposed to establish the Safe and Affordable Drinking Water Fund (SADWF) and temporarily fund it with a \$4.7 million loan from the Underground Storage Tank Cleanup Fund. Under the proposal, charges would have been imposed on water system rate payers and various agricultural entities that would have been administered by SWRCB and the California Department of Food and Agriculture (CDFA), respectively. The proceeds from the charges were to be deposited in SADWF where they were to be prioritized to fund O&M costs, as well as capital costs associated with water system consolidation and service extensions. Although the Legislature did not approve the Governor's proposal, under Chapter 449 of 2018 (SB 862, Committee on Budget and Fiscal Review), the Legislature signaled its interest in continuing to work on this issue by providing SWRCB with \$3 million to develop a refined estimate of the total cost associated with bringing drinking water systems that are currently unable to meet water quality standards into compliance. Based on our conversations with SWRCB, it has begun this analysis and anticipates that it will take two years to complete the estimate.

Governor's Proposal

In the 2019-20 budget plan, the administration proposes to establish the SADW program to increase access to safe drinking water for Californians. Similar to last year's proposal, the program would provide certain local water agencies—particularly ones in disadvantaged communities—with grants, loans, contracts, or services to help support their O&M costs. This funding would be supported by new charges proposed by the Governor on water system ratepayers, fertilizer sales, and certain agricultural entities. For 2019-20, the administration requests \$4.9 million General Fund in one-time funding for state administration costs at the SWRCB and CDFA to begin implementation of the program. Below, we provide additional details about key aspects of the administration's proposal.

Imposes Various Charges. In total, the administration estimates that the various proposed charges would generate roughly \$110 million to \$140 million annually when fully implemented. Charges on fertilizer and agricultural entities would sunset 15 years after they go into effect. Specifically the administration proposes budget trailer legislation to implement the following charges:

- **Charge on Water System Customers (\$100 Million to \$110 Million).** Beginning July 2020, the administration proposes imposing monthly charges on most water system customers ranging from \$0.95 to \$10 per month based on the size of the customers' water meter. According to a recent report by a private consulting firm, the average monthly residential water bill across the state typically falls between \$40 to \$80. SWRCB estimates these charges would generate between \$100 million and \$110 million annually when fully implemented. Beginning July 2022, SWRCB could reduce the amount consumers are charged. Customers would be exempted from the charges if (1) they self-certify that their household income is equal to or less than 200 percent of the federal poverty level (\$25,100 for a family of four in 2019) or (2) receive service from a water system with fewer than 200 connections.

Local water systems would be authorized to retain 4 percent of the revenue to cover costs associated with the collection of the charges until July 2022 when the amount the water systems could retain would decline to 2 percent.

- **Fertilizer Mill Fee (\$14 Million to \$17 Million).** The administration proposes a mill fee of six "mills" (equal to six-tenths of a cent) per dollar on the sale of fertilizer. This would be in addition to the current mill fee of three mills. This fee would go into effect upon enactment of the budget trailer legislation. According to CDFA, this charge is estimated to generate \$14 million to \$17 million per year when fully implemented.
- **Charges on Milk Producers (\$5 Million).** The administration proposes to impose charges on milk producers beginning January 2022. In total these charges are estimated to generate \$5 million per year when fully implemented. We note that the dairy industry in California generated \$6.6 billion in cash receipts in 2017.
- **Charge on Confined Animal Facilities (Amount Not Estimated).** Beginning January 2022, the administration proposes to impose a charge on confined animal facilities—excluding dairies—such as poultry and other livestock operations. A workgroup would be convened by the administration to establish a charge commensurate with the risk to groundwater confined animal facilities create by discharging nitrates. The charges are capped at \$1,000 per facility.

Requires SWRCB to Administer New SADW Program. The proposal includes a number of administrative requirements, particularly for SWRCB. The board is required to adopt a fund implementation plan and policy handbook with priorities and guidelines for expenditures from the SADWF. In addition, SWRCB staff would be required to annually develop and present to the board an assessment of the total annual funding needed to assist water systems in the state to secure the delivery of safe drinking water. By January 2021, SWRCB—in consultation with local

health officers—would also have to make available a map of aquifers that are at high risk of containing contaminants that are used or likely to be used as a source of drinking water for certain smaller water systems and domestic wells. This would include identification of water systems potentially in need of assistance to address water contamination issues.

Under the Governor’s proposal, beginning July 2022, SWRCB may expend up to 5 percent of revenues collected by water systems and deposited into the SADWF for costs associated with its administration. Based on current estimates, this could be up to about \$5 million annually. In addition, CDFA may retain up to 4 percent of the monies collected from the charges on agricultural entities for its costs associated with implementation and enforcement, such as to establish a charge collection program and perform outreach to affected agricultural entities. This amount would decrease to 2 percent beginning July 2022.

Provides Disadvantaged Communities With Funding for O&M. Under the administration’s proposal, SWRCB would prioritize the use of funds to assist disadvantaged communities and low-income households served by a water system with less than 14 connections. Funding would be prioritized to support O&M costs, as well as capital costs associated with water system consolidation and service extensions. Allowable uses would include providing replacement water on a short-term basis, as well as the development, implementation, maintenance, and operation of more permanent solutions (such as water treatment systems). The charges on agricultural entities would be targeted towards nitrate mitigation activities.

Shields Certain Agricultural Entities From Regulatory Actions. In accordance with current law, SWRCB and regional water boards issue various permits and waivers that regulate agricultural practices that contribute to water contamination, such as nitrate contamination of groundwater. Agricultural entities that contribute to water quality contamination are subject to enforcement actions that can include cleanup and abatement orders. For example, SWRCB can issue cleanup and abatement orders when a discharger has caused waste—such as pesticides, chemicals, or nitrates—to be discharged into bodies of water

or has deposited waste where it is likely to cause pollution. Under the cleanup and abatement order, the discharger typically must clean up the waste and reimburse SWRCB and regional boards for oversight costs. Under the Governor’s proposal, if an agricultural operation meets certain requirements—such as implementing the best practicable treatment control or other requirements of their applicable permits and waivers—and pays the charges required by this proposal, the operation generally would not be subject to certain enforcement actions, such as cleanup and abatement orders. These are sometimes referred to as “safe harbor” provisions.

2019-20 Budget Proposals. For 2019-20, the administration requests a total of \$24.9 million in one-time General Fund support as follows:

- ***SWRCB (\$3.4 Million).*** The budget proposes \$3.4 million in one-time funding for 23 positions for SWRCB to (1) map high-risk aquifers and process water quality data from small water systems, (2) develop an assessment of the total annual funding needed to assist water systems in the state to deliver safe drinking water, (3) develop an implementation plan that includes funding priorities and guidelines, and (4) process fees that will be deposited into a new fund and perform accounting work.
- ***CDFA (\$1.4 Million).*** The budget proposes \$1.4 million in one-time funding for seven positions for CDFA to (1) establish a new registration and fee collection system for dairies, farms, and ranches and (2) administer the fertilizing materials mill assessments augmentation.
- ***Grants and Contracts (\$10 Million).*** The budget proposes \$10 million for grants and contracts to provide administrative, technical, operational, or managerial services to water systems—mainly in disadvantaged communities—to support compliance with current drinking water standards. At the time this analysis was prepared, the Legislature was considering a bill—AB 72 (Committee on Budget)—to provide this augmentation in 2018-19.

- **Water Emergencies (\$10 Million).** The budget proposes \$10 million to fund the emergency provision of safe drinking water where it is not available. At the time this analysis was prepared, the Legislature was considering a bill—AB 72—to provide this augmentation in 2018-19.

Issues for Legislative Consideration

The Legislature faces a policy decision about whether to increase charges on different products, livestock operations, and drinking water consumers in order to implement a new program. The new program funded by these charges would address a critical gap in the state's existing safe drinking water program structure by providing funding for O&M, as well as technical assistance to small water systems. Below, we raise some issues for the Legislature to consider as it deliberates this proposal.

Proposal Is Consistent With Human Right to Water Policy. The Governor's proposal is consistent with the state's statutory policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption. The proposal would make safe and affordable drinking water more widely available throughout the state largely by providing funding for O&M activities for water treatment systems. Based on the information available, the estimated \$110 million to \$140 million in additional funding could move the state significantly forward towards its goal of providing safe affordable drinking water to all of its citizens, particularly those in disadvantaged communities.

Uncertain Extent to Which Proposed Revenues Will Fully Address Problems. The administration has not completed an estimate of the total cost associated with bringing drinking water systems that are currently unable to meet water quality standards into compliance on an ongoing basis. As noted above, the SWRCB study funded under Chapter 449 is not expected to be completed until the fall of 2020. However, a private consulting firm estimated the total annual cost to address contaminated drinking water at roughly \$140 million (\$30 million for nitrate treatment and

\$110 million for other contaminants). However, this estimate is highly uncertain given the lack of data, especially regarding the number of smaller water systems and domestic wells that fail to provide safe drinking water. It is possible that actual costs could be significantly higher or lower.

There is also uncertainty about the amount of revenue that will be generated under this proposal, particularly from the agricultural entities. The budget trailer legislation allows SWRCB to adjust ratepayer charges downward if the funding provided exceeds future demand for the funds (as identified in the annual funding needs assessment the SWRCB would be required to prepare). If the demand exceeds funding in the future, any increase in charges would require approval by the Legislature.

Most Charged Payers Would Not Be Beneficiaries of Program . . . The main beneficiaries of this new program would be people in disadvantaged communities and those served by smaller water systems. These water customers should get access to clean drinking water at lower cost to them than would otherwise be available to them without this program. The largest share of program costs, however, would be paid by water system ratepayers across the state (with certain exceptions for low-income persons and customers of systems with less than 200 connections). The majority of these ratepayers are served by systems that already provide safe affordable drinking water. Therefore, ratepayers of these water systems are unlikely to benefit from the new program.

. . . Or Be at Fault for the Contamination Being Mitigated. The vast majority of nitrate contamination is caused by agricultural activities such as fertilizer applications and animal operations, such as dairies. The administration's proposal to have agricultural entities pay charges to address the effects of nitrate contamination creates a link between the agricultural operations that are the main source of the nitrate contamination and the entities that would pay charges to mitigate it. However, it is worth noting that some of the current nitrate contaminants in groundwater are not from current agricultural operations. Instead, some of these nitrates are legacy contamination that could be from as much as decades ago.

In addition, the CDFR estimates the charges on dairies, fertilizer, and confined animal operations combined would total about \$19 million per year when fully implemented. (At the time this analysis was prepared, the administration had not completed a revenue estimate for the charge on confined animals.) Consequently, if the costs to mitigate nitrate-related contamination in drinking water exceeds the revenues generated by charges on agricultural entities, then nitrate-related contamination in drinking water could be addressed from revenues generated by the charge on water system customers rather than from agricultural entities.

Alternative Sources of Funding Are Limited.

Generally, we find that alternative funding sources to pay for the Governor's SADW proposal are limited. The SADW program will require a steady ongoing funding stream to meet the state's commitment to provide long-term support for O&M for water systems. General Fund is an alternative funding source for the program. However, SADW would have to compete with other programs for funding from a limited amount of General Fund. To the extent that there are any reductions in General Fund support for the program, it could result in potentially serious threats to public health if the water systems benefiting from the program fall out of compliance with drinking water standards due to neglect. In contrast, the Governor's proposal would provide a dedicated revenue source for the program.

In addition, we find that bond funding would not be appropriate for this program because bonds provide a one-time fund source and should not be relied on as an ongoing fund source. Moreover, general obligation bonds are repaid from the General Fund with interest and, therefore, would cause this approach to be somewhat more expensive than direct appropriations from the General Fund. We also note that we have not identified any existing special funds that would be appropriate to support this program and would have sufficient available funds.

Safe Harbor Provisions Would Affect Enforcement Authority. The proposal's safe harbor provisions involve some policy trade-offs compared to the state's current enforcement approach.

On the one hand, the proposal is structured to better ensure that significant funding is available for water quality mitigation throughout the state rather than to limited areas in the state. This is because the state's current enforcement approach generally relies on targeting individual or groups of polluters in a limited geographic area, and these enforcement actions can be administratively difficult to complete. For example, the state rarely issues a cleanup and abatement order for nitrate contamination (though it has reached settlements in two regions). On the other hand, under the proposal, the state would relinquish its authority to take certain enforcement actions—such as cleanup and abatement orders—against polluters if they are otherwise complying with their applicable permits and waivers. This would limit the SWRCB's authority, and the Legislature will want to ensure that it is okay with this trade-off before approving the proposal.