



- Board of Directors
Communications and Legislation Committee

10/8/2019 Board Meeting

8-4

Subject

Authorize the General Manager to co-sponsor legislation to create a program at the State Water Resources Control Board to identify and evaluate drinking water quality constituents of emerging concern; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

California does not have a dedicated Constituents of Emerging Concern (CECs) program for drinking water. While the federal Safe Drinking Water Act (SDWA) offers a robust framework to evaluate unregulated contaminants, the process is often not timely and may not address issues relevant to California. Recently, federal and state legislators have responded to growing public concern and passed legislation related to select CECs. This legislative process bypasses the scientific, data-driven process and forces drinking water systems to comply with requirements that have not been well analyzed. Staff recommends co-sponsoring legislation to establish and maintain a statewide CECs program led by the State Water Resources Control Board (State Water Board) to systematically identify and evaluate CECs in drinking water sources, including recycled water and treated drinking water, and examine their potential effects on public health. The program would improve data gathering and risk communication for CECs, allowing regulatory agencies, the water industry, and the public to make better-informed decisions on drinking water quality issues.

Details

Background

The State Water Board does not have a dedicated program to assess CECs in drinking water sources or a comprehensive plan to respond to growing public and political concerns. When a contaminant is detected, or its potential risks are reported by the media, state agencies and water purveyors often must formulate a response to concerns without the best data available. Under the SDWA, the U. S. Environmental Protection Agency uses the Contaminant Candidate List (CCL) and the Unregulated Contaminant Monitoring Rule (UCMR) to collect data for unregulated contaminants to make regulatory determinations. However, the CCL/UCMR process can take several years before a final regulatory decision is made. Further, the process is not focused on California's environment, population distribution, and land-use patterns.

As an alternative to the CCL/UCMR process, Congress put forth numerous bills on per- and polyfluoroalkyl substances (PFAS, one type of CECs) in 2019. Similarly, California passed two bills—Senate Bill 1422 (D-Portantino) in 2018 and Assembly Bill 756 (D-C. Garcia) in 2019—related to CECs. The passage of these bills bypasses the scientific, data-driven, regulatory process and establishes requirements for constituents outside of the SDWA regulatory framework. For example, SB 1422 requires the State Water Board to develop a program to monitor for microplastics in drinking water, without standardized methods and any available information on public health effects. Similarly, AB 756 creates separate notification requirements that are unique to PFAS.

Proposed Legislation

Staff is proposing legislation to establish and maintain a statewide CECs program under the direction of the State Water Board. The program would address the occurrence, fate and transport, and biodegradation of CECs in drinking water sources, including recycled water and treated drinking water and examine their potential effects on public health. The program would include, but not be limited to, the following elements:

- Establish a Science Advisory Panel to review the state of knowledge and provide recommendations on CECs in drinking water relevant to California.
- Consult with the California Department of Toxic Substances Control and Office of Environmental Health Hazard Assessment to identify CEC candidates based on their potential impact on public health, considering factors such as occurrence and fate in the environment, toxicity, and biological activity, and potential bioaccumulation.
- Develop a systematic mechanism for prioritizing CECs based on potential health effects and known or anticipated occurrence.
- Develop a process for evaluating, standardizing, and validating analytical detection methods for CECs.
- Develop a risk-based screening program that identifies and evaluates CECs and appropriate indicators and/or surrogates in drinking water sources, and assesses their fate in the environment and potential for human exposure.
- Provide opportunities for stakeholder engagement.

The proposed CECs program at the State Water Board would ensure a science-based, systematic process for identifying and evaluating CECs and selecting the most appropriate analytical methods if monitoring is deemed necessary. Such a program would ensure a unified and consistent approach for assessing the public health and drinking water industry consequences of a broad spectrum of CECs. The program would help bridge the current research gap on CECs by establishing a Science Advisory Panel that would assist the State Water Board in identifying the CECs that warrant attention. The CECs program would establish a risk-based screening program utilizing a research institution. Water and wastewater agencies could also voluntarily participate to establish additional occurrence data. Data generated through the program would be beneficial in developing future monitoring strategies for drinking water sources. The program would enhance coordination between water sector partners, including the State Water Board, industry and academic institutions, but would not duplicate nor interfere with existing state or federal agency efforts. Contingent upon Board authorization to pursue this legislative proposal, Metropolitan would work with the state and others to identify potential funding sources for this program.

Metropolitan's Board-adopted Policy Principle on Drinking Water Quality and 2019 Federal and State Legislative Priorities and Principles supports legislative efforts to utilize sound science in developing drinking water regulations and appropriate health effects research/data when setting drinking water standards. In addition, Metropolitan submitted a letter on July 11, 2019, to members of Congress advocating adherence to the SDWA process when mandating any regulatory determination for PFAS.

Staff recommends that Metropolitan sponsor the proposed legislation and seek co-sponsorship with the California Municipal Utilities Association and work proactively to ensure its passage.

Policy

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities.

By Minute Item 46191, dated April 12, 2005, Policy Principles for Drinking Water Quality.

By Minute Item 51418, dated December 11, 2018, Metropolitan 2019 State Legislative Priorities and Principles.

By Minute Item 51419, dated December 11, 2018, Metropolitan 2019 Federal Legislative Priorities and Principles.

By letter from Metropolitan to the United States Congress, dated July 11, 2019, regarding PFAS.

By letter from Metropolitan to Governor Newsom of California, dated July 29, 2019, regarding PFAS.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves legislative proposals that do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Public Resources Code Sections 21065, 21083 and Section 15378(b)(1) of the State CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

Authorize the General Manager to co-sponsor legislation to create a program at the State Water Resources Control Board to identify and evaluate drinking water quality constituents of emerging concern.

Fiscal Impact: The costs associated with sponsoring this bill in the state legislature will be absorbed within existing staffing and program budgets. If the proposed legislation is enacted into law, a full assessment of costs (or benefits) to implement and conduct the activities will be determined and provided to the CFO's office.

Business Analysis: Expressing support for the proposed legislation would allow Metropolitan to advocate for a scientific, data-driven process in identifying and evaluating drinking water quality CECs.

Option #2

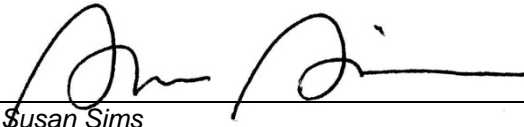
Do not authorize the General Manager to co-sponsor legislation to create a CECs program at the State Water Resources Control Board.

Fiscal Impact: Unknown

Business Analysis: If Metropolitan does not advocate for the proposed bill, the legislature may continue to be active in setting monitoring and reporting requirements for CECs in drinking water outside of the regulatory framework.

Staff Recommendation

Option #1


 _____ 9/30/2019
 Susan Sims Date
 Manager, External Affairs


 _____ 10/1/2019
 Jeffrey Kightlinger Date
 General Manager