

BACKGROUND

This hearing is intended to provide an open dialogue on the issue of safe and affordable drinking water. Over the past two years, several proposals have been introduced to address the cleanup and distribution of clean drinking water, particularly in areas with legacy pollutants. This background provides an overview of the issue (Legislative Analyst's Office) as well as a summary of various legislative and administrative proposals. Finally, a number of issues for legislative consideration are provided.

The Legislative Analyst's Office provides a concise background on the general topic of Safe and Affordable Drinking Water in their *Analysis of the 2018-19 Governor's Budget*, as follows:

Federal, State, and Local Entities Regulate Drinking Water. The federal Safe and Affordable Drinking Water Act (SDWA) was enacted in 1974 to protect public health by regulating drinking water. California has enacted its own safe drinking water act to implement the federal law and establish state standards. The U.S. EPA enforces the federal SDWA at the national level. However, most states, including California, have been granted “primacy” by the U.S. EPA, giving them authority to implement and enforce the federal SDWA at the state level.

Maximum contaminant levels (MCLs) are health-based drinking water standards that public water systems are required to meet. MCLs take into account the health risk, detectability, treatability, and costs of treatment associated with a pollutant. Agencies responsible for regulating water quality enforce these standards.

The California State Water Resources Control Board's (State Water Board) Division of Drinking Water (DDW) regulates public water systems that provide water for human consumption and have 15 or more service connections, or regularly serve at least 25 individuals daily at least 60 days out of the year. (A “service connection” is usually the point of access between a water system's service pipe and a user's piping.) The state does not regulate water systems with less than 15 connections; county health

officers oversee them. At the local level, 30 of the 58 county environmental health departments in California have been delegated primacy—known as Local Primacy Agencies (LPAs)—by the State Water Board to regulate systems with between 15 and 200 connections within their jurisdiction. For investor-owned water utilities under the jurisdiction of California Public Utilities Commission (CPUC), the DDW or LPAs share water quality regulatory authority with CPUC.

The DDW regulates approximately 7,500 water systems. About one-third of these systems have between 15 and 200 service connections. The number of smaller systems—specifically, those with 14 or fewer connections—is unknown but estimated to be in the thousands.

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.

Three of the most commonly detected pollutants in contaminated water are arsenic, perchlorate, and nitrates. While arsenic is naturally occurring, perchlorate contamination is generally a result of military and industrial uses. High concentrations of nitrate in groundwater are primarily caused by human activities, including fertilizer application (synthetic and manure), animal operations, industrial sources (wastewater treatment and food processing facilities), and septic systems. Agricultural fertilizers and animal wastes applied to cropland are by far the largest regional sources of nitrate in groundwater, although other sources can be important in certain areas.

Unsafe Drinking Water a Statewide Problem. The State Water Board has identified a total of 331 water systems that it or LPAs regulate that are in violation of water quality standards. These water systems serve an estimated 500,000 people throughout the state. The number of water systems with 14 or fewer connections that are currently in violation of water quality standards is unknown, but estimated to be in the thousands by the State Water Board. Of the 331 systems identified by the State Water Board, 68 have violations associated with nitrates (and in some cases,

additional contaminants). In some of these water systems, unsafe contamination levels persist over time because the local agency cannot generate sufficient revenue from its customer base to implement, operate, or maintain the improvements necessary to address the problem. 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.

Safe and Affordable Drinking Water a Human Right. In response to concerns about the prevalence of unsafe drinking water in California, Chapter 524 of 2012 (AB 685, Eng) was enacted. 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.

State Water Board Administers Programs to Provide Safe Drinking Water. The State Water Board administers the Drinking Water State Revolving Fund (DWSRF), which provides continuously appropriated funding for low- and zero-interest loans, debt refinancing, principal forgiveness, and grants 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. The program is funded by annual capitalization grants from the U.S. EPA 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 2016-17, the State Water Board estimates the DWSRF disbursed about \$330 million and provided technical assistance to water systems.

The State Water Board also administers temporary programs to provide safe and affordable drinking water. For example, the State Water Board administers the Clean Drinking Water Program for Disadvantaged Households, which provided one-time funding of \$8 million General Fund in 2017-18 to disadvantaged households and small water systems to ensure they have adequate access to clean drinking water and adequate sanitation. Eligible projects include capital costs for replacement and repair of existing domestic wells. The State Water Board has also administered funds approved by the voters through various bond measures for capital investments, and some operations and maintenance costs aimed at providing safe drinking water. For example, Proposition 1 (2014) authorized \$520 million for grants and loans for projects that improve water quality, including to help provide clean, safe, and reliable drinking water to all Californians. Some of this funding supports the DWSRF.

Legislation Introduced in 2017 and 2018

In 2017, Senator Monning introduced SB 623 to provide a comprehensive solution to the issue of safe and affordable drinking water. This bill provided the framework for a multi-decade program designed to both decrease the amount of contaminants moving into water supply resources (mainly groundwater), and to ensure that communities would be able to build, operate, and maintain water treatment systems. In order to achieve this goal, a series of fees and taxes on agricultural inputs and water systems was proposed. This bill ultimately did not pass but provides the basis for two other bills that moved through the Legislature in 2018 (SB 844 and SB 845, both by Monning), and the Governor's 2018 budget and trailer bill proposal. Ultimately, none of these bills were adopted by the Legislature.

In their analysis of SB 623, the Environmental Safety and Toxic Materials Committee provided an extensive breakdown of the issue and the proposed legislation (attached). According to the author, the need for the SB 623 is:

"Section 106.3 of the Water Code declares that every Californian has the right to sufficient clean, safe, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

However, drinking water safety and affordability issues currently affect California communities across the state, with low-income communities and communities of color experiencing the greatest impact.

Recent data by the State Water board identified roughly 300 California public water systems serving communities and schools that are currently out of compliance with drinking water standards, some of which have been unable to provide safe drinking water for years, including some for more than a decade. These systems serve 692,807 people, or almost 1.8% of all Californians.

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. As a result, disadvantaged communities and others in need of drinking water treatment may be unable to meet drinking water standards because they are unable to afford the cost of drinking water treatment, or their drinking water rates may be over 1.5% of median household income (MHI), which is the level of affordability incorporated into California's SDWSRF loan forgiveness eligibility standards. What is more, families in these disadvantaged communities may be forced to purchase bottled water in addition to paying their monthly water bill, creating a doubled financial burden.

Ongoing source of operations and maintenance funding for drinking water treatment for disadvantaged communities needs to be stable and sustainable, since communities, particularly disadvantaged communities, cannot afford to build drinking water treatment plants and then have funding disappear. SB 623 seeks to provide an ongoing funding stream to ensure that disadvantaged communities have access to clean, safe, affordable, drinking water."

2018 Budget Request (Including Trailer Bill). The Governor, as part of the 2018-19 Budget, proposed trailer bill language to establish the Safe and Affordable

Drinking Water Program and Fund to be administered by the State Water Board. The proposal, similar to SB 623, would have:

1. Provided the Department of Food and Agriculture (CDFA) the authority to impose and collect fees from certain agricultural entities, including a budget of \$1.4 million and 7 positions.
2. Exempted an agricultural operation from enforcement for causing or contributing to nitrate in groundwater if they demonstrate certain mitigation requirements are followed.
3. Provided \$3.3 million and 23 positions to the State Water Board to: 1) develop and adopt a fund implementation plan; 2) process charges that would be deposited into the fund; 3) map areas at high risk for drinking water contamination and process drinking water data provided by local agencies; and, 4) perform accounting and other administrative tasks.

In their analysis of the budget proposal, the LAO provided their bottom line: “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 three issues for the Legislature to consider as it deliberates on the proposal: (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.”

Attachments:

Jonathan London, Amanda Fencil, Sara Watterson, Jennifer Jarin, Alfonso Aranda, Aaron King, Camille Pannu, Phoebe Seaton, Laurel Firestone, Mia Dawson, Peter Nguyen (2018). *The Struggle for Water Justice in California's San Joaquin Valley: A Focus on Disadvantaged Unincorporated Communities*. Davis, CA: UC Davis Center for Regional Change.

Analysis of SB 623 (Monning) of 2017, Assembly Environmental Safety and Toxic Materials Committee